

THE NEW-YORK CITY-HALL RECORDER.

VOL. III.

November, 1818.

NO. 11.

AT a COURT of GENERAL SESSIONS
of the Peace, holden in and for the City
and County of New-York, at the City-
Hall of the said City, on *Monday*, the 2d
day of *November*, in the year of our
Lord one thousand eight hundred and
eighteen—

PRESENT,

The Honourable

CADWALLADER D. COLDEN,

Mayor of the City of New-York.

REUBEN MUNSON and } *Aldermen.*
GEORGE B. THORPE, }

PIERRE C. VAN WYCK, *Dist. Att.*

JOHN W. WYMAN, *Clerk.*

GRAND JURORS.

WILLIAM LAWRENCE, *Foreman.*

EDWARD LYDE,	SHEFFINTON SELEY,
JOHN MASON,	GEORGE ARCULARIUS,
ISAAC MINARD,	GARRIT B. ABEEL,
JOHN B. MILLER,	JOHN ATKINSON, JUN.
CHARLES OSBORNE,	JOHN BLOODGOOD,
ISAAC F. ROE,	GOOLD HOYT,
SAMUEL ROEBINS,	T. A. RONALDS,
DAVID ROGERS,	WILLIAM HOWELL,
MORRIS SHIPLEY,	EDMUND SMITH,
JOHN SUYDAM,	TOBIAS V. MUMFORD,
JOHN N. LUFF,	C. MILDEBERGER.

(LOTTERY MANAGEMENT—CARELESSNESS—
FRAUD—LIBEL—INNUENDO.)

CHARLES N. BALDWIN'S CASE.

VAN WYCK, JAY, and WELLS, *Counsel for
the prosecution.*

HOFFMAN, OGDEN, and FAY, *Counsel for
the defendant.*

The office of an *innuendo* is to explain, not to ex-
tend or enlarge the obvious meaning and intent
of a publication alleged to be a libel.

Where the *gravamen* laid in an indictment for a
libel, consisted in a charge of *swindling* against
the state managers of a particular lottery and a
sub-manager acting under them, but the obvious
import of the publication was a general charge
of fraud in lottery management, and of care-
lessness and mismanagement on the part of the

state managers, it was held that the *innuendo*
could not extend the meaning of the publica-
tion, touching the charge of fraud, to the state
managers.

When in such case the charge of carelessness, by
which a facility to fraud was afforded to persons
concerned in the management of such lottery,
acting by permission of the state managers, ap-
peared to be fully established on the part of the
defendant, and a variety of facts and circum-
stances are produced on his behalf for the pur-
pose of showing that *fraud* was actually com-
mitted by persons concerned in the management
of that and of other lotteries, should the jury
believe that fraud was practised by any person
in any manner concerned in such management,
they will be justified in acquitting the defend-
ant; but should they not believe this, still, if the
facts and circumstances produced by him ap-
pear sufficient to excite a well-grounded belief
of the existence of fraud, and to justify the sus-
picious expressed in the publication, he will be
entitled to an acquittal.

In such case should fraud be inferred by the jury,
its development by the defendant is praisewor-
thy, and he will be presumed to have made the
publication with good motives and for justifi-
able ends; but if fraud is not inferred, still, if he
was not actuated by malicious or mischievous
motives, he cannot be convicted of a libel.

The defendant was indicted for writing
and publishing two libels.

The indictment alleged that Samuel L.
Mitchill, John McLean, Isaac Denniston,
Moss Kent, and Jeremiah Johnson, being
the managers of a certain lottery, author-
ized by law, called the Medical Science
Lottery, Fifth Class, and that John H.
Sickels, a sub-manager, and John Ten
Broeck, being employed by the managers
in the drawing of that lottery, the defend-
ant, on the 19th day of September, 1818,
did falsely, maliciously, and wickedly
print and publish in a certain newspaper,
entitled "Republican Chronicle and City
Advertiser," concerning the said mana-
gers, sub-manager, and the said Ten
Broeck, a libel of the following tenor:
"Lotteries: This interesting subject has
excited an extensive and deep sensation
in this community. We are now pre-
pared to assure the public that on next
Wednesday our paper will contain a plain
statement of facts relating to our late
serious charge, that shall unfold to the
public a scene of deep-laid villany in lot-

tery management (meaning and intending the management of the fifth class of the Medical Science Lottery) such as the public have seldom witnessed. We once more acquit the state managers of all guilt! We are happy to hear that the drawing of the lottery is suspended until Wednesday; that the managers are about to assemble and investigate the truth of our charges, (meaning previous false and malicious charges concerning the management of the said lottery,) and that Mr. Denniston has already arrived in town to fill the vacancy occasioned by the sudden retirement of one of the sub-managers of the wheels! On Wednesday next we shall speak at large on this interesting subject."

The indictment further alleged, that afterwards, and on the 23d of September, the defendant published in the same paper, concerning the persons above named, the following libel: "At one lottery a little boy was detected in the fact of having concealed a number which he had received from his master, who was an insurer, and who had been employed to make up the tickets from the wheel, as Mr. Sickels was to make up the tickets for the present wheel. At another, a little boy was bribed to conceal a number which afterwards it appeared was insured in the city; and the man being detected by the information of the boy, was exposed by the managers, and his project defeated. At another lottery, the drawing had closed when a clerk informed the managers, (meaning the said Samuel L. Mitchell, John M'Lean, Moss Kent, Isaac Denniston, and Jeremiah Johnson, managers of the Medical Science Lottery,) that No. 17 was not yet called—but the managers (still meaning the said managers of the Medical Science Lottery) settled the hash quickly, by one's calling 'No. 17,' and the other's answering 'Blank!' In that instance No. 17 had most likely been taken out of the wheel (meaning the wheel of the said Medical Science Lottery) for some villanous purpose, and the owner certainly was deprived of his chance for the high prize by somebody, (meaning by this insinuation some one or more of the said managers of the lottery aforesaid had acted fraudulently.) Many similar accidents (meaning fraudulent transactions on the part of the said mana-

gers) have happened; and it is very strange that the wheel still is managed in the same harum scarum and careless manner, (meaning illegal and fraudulent conduct on the part of the said managers.) The very day when Mr. Denniston drew the stationary \$35,000 in the Owego Lottery, Mr. Sickels drew the number in a very improper manner, (thereby meaning a manner that was fraudulent.) He put his own hand in the wheel (meaning the wheel of the Owego Lottery) and took out the number. It is true the boy was by some reason or other (meaning by a fraudulent design) absent, but we object to the manner! He has managed in a way more improper at other times (meaning in a way that was wicked and fraudulent) by taking out a handful and opening them from his lap. And here we entreat the managers forthwith to adopt the European mode in all respects; it will prevent accidents and strange suspicions, (meaning suspicions of the managers' honesty.) It is for these reasons we are making these statements. We do not wish to accuse Mr. John H. Sickels, or Mr. Naphtali Judah, or Master Ten Broeck. If it be true that Mr. Sickels is or was, up to the ninth day, the only substitute at the number wheel, (meaning by this to insinuate that the said S. improved the opportunity for fraudulent purposes,) that Master Ten Broeck, his grandson, draws the numbers from that wheel, that Mr. Judah received an anonymous letter, informing him that No. 15468 would come out on that day—that Mr. Judah, acting on the faith of that letter, (hereby insinuating that a certain anonymous letter was sent to said Judah by the direction and connivance of the said lottery managers, whereby they were guilty of fraud,) insured several thousand dollars on that number—that the number did come out that day—that it was soiled as if the number had been worn in the pocket, (hereby insinuating fraudulent practices and connivance on the part of the said managers,) and is not soiled now—then we say there has been swindling in the management of this lottery some where! (meaning fraud and swindling on the part of the said Samuel L. Mitchell, &c., managers, and Sickels sub-manager, and Ten Broeck;) and it is high time for

the public to look to it! the certificates of the managers, the affidavits of Messrs. Sickels, Judah, and Ten Broeck to the contrary notwithstanding! (hereby meaning that the said managers, sub-manager, and Ten Broeck had been guilty of fraudulent practices in relation to the management of the said Medical Science Lottery, Fifth Class.) Between our statement and that of the managers, we leave the public to judge. That there has been carelessness every one will readily admit—that fraud may have been committed is certainly possible, (meaning fraud on the part of the managers, sub-manager, and Ten Broeck.) We think the soiled tickets—the dream—the anonymous letter—the insurance—the abandonment of the insurance—and the ease with which the tickets may be taken out, secreted, and called on a particular day! (hereby meaning that the said managers, sub-manager, and Ten Broeck were guilty of fraud and gross wickedness,) altogether places the charge of fraud (meaning fraud on the part of the managers, &c.) beyond the power of contradiction:” to the great scandal of the managers—to the injury and prejudice of the said Sickels and Ten Broeck, &c., and against the peace, &c.

The defendant pleaded not guilty, and the cause came on for trial on Tuesday, the tenth of November instant.

Jay opened the case, on behalf of the prosecution, by stating the publications upon which the indictment was founded, contained facts which, if true, stamped the character, as well of the state managers as of those concerned in the management of the Fifth Class of the Medical Science Lottery, with fraud and infamy. The defendant had not merely expressed an opinion concerning the management of our lotteries, but had made a general charge of swindling against those gentlemen. The counsel proceeded to read the libels from the newspapers, when the prosecution rested.

It was admitted that the persons named in the indictment as managers, and sub-manager, were such.

Fay opened the defence, by stating that the intention of the defendant in the publication read was not to charge the legal managers of this lottery with fraud. The amount of the publication was, that by the

carelessness and mismanagement on the part of the state managers, a facility had been given to fraud and swindling, on the part of others concerned in the management of the lottery. There had been a conspiracy between Sickels, the sub-manager, and Naphtali Judah, to make money out of this lottery in a mode to be detailed in the testimony.

The counsel proceeded to show the carelessness of the managers, the connexion between Judah and Sickels, and to enumerate a variety of acts, in relation to the drawing and management of lotteries, affording a facility to fraud and iniquity in the insurance of lottery tickets.

The statute creating the powers, and prescribing the duties, of the managers, had imposed on them the solemn obligation of an oath; but they, regardless of their duty, had confided to Sickels, without an oath, the most delicate and important functions of their office.

It would be proved, that in a variety of instances which the counsel enumerated, numbers had been kept out of the wheel, and that on those numbers insurances had been made to a large amount.

The counsel hereupon called on the witnesses hereafter named, who were severally sworn:

Thomas W. Thorn, stated that he lived at the corner of Reed and Hudson-streets, and that Naphtali Judah lived in Duane-street. On the 11th of September last, early in the morning, when in bed, Judah, in company with Isaac Moses, came to his house, when Judah requested the witness to get a number insured, saying that he had had a dream of this nature; he dreamed that he was in this Hall, and heard No. 15468 called out, and awoke, and falling asleep, dreamed the same dream; the last call being so loud that it awakened him.

The witness was requested by Judah to procure the insurance to the amount of \$2600, at particular lottery offices, which he pointed out, that the insurers should not apply to him for insurance on the same number. It was to be insured for the 9th day's drawing, and the witness was to have a share of \$250. The premium, amounting to \$110, was paid by Judah to the witness, who was to repay his proportion of the premium for \$250. As the agent of Moses and Judah, the wit-

ness effected insurance on the number to the amount of \$2600, and Moses, on his own part, requested him to make insurance to a greater amount, as he alleged that Mr. Judah was a very lucky man. The witness insured for Moses and himself \$100 more, so that his proportion in the concern was \$260.

The number came out on the 9th day's drawing, and the witness having understood from some or one of those on whom the insurance had been made, that there had been unfairness practised in relation to that number, and that they would not pay their hits, Judah, on the same day, came to the witness before his door, took his hand, gave it a friendly shake, and said, "Well, we have hit them." The witness then imparted to him the information that he had received: that the insurers had told him that there was unfairness in the drawing of the number, which had been worn in the pocket and soiled, and on that ground they refused to pay. Judah told the witness that if any one accused him of unfairness he would blow his brains out.

The next morning ten or twelve persons, among whom were A. P. Brower, J. A. Burtis, Thomas Powers, Samuel Healy, Benjamin Crane, and Samuel Sharp, came over to this Hall in a room on the basement floor where the lottery was drawn, and requested Mr. Gilchrist, one of the clerks employed in the drawing, to suffer them to examine the files of the numbers. The numbers 15468, 3365, and 30, were examined by all present, who agreed the numbers were soiled.

The witness afterwards, and on the same day, at his house, had a conversation with Judah in presence of Moses, when the witness again told Judah that the hits would not be paid, but he still persisted in declaring that they should be paid, and insisted that the policies should be delivered to him, which the witness declined doing.

On Monday, the 14th of September, at the lottery office of Smith, in Greenwich-street, in presence of the witness, Judah, for the first time, produced and read an anonymous letter, directed to himself, informing him that No. 15468 would come out on the 9th day's drawing. This letter was alleged by him to be the cause of

his insuring the number. On this day he agreed to give up his policies and take back his premium, alleging at the time that he did not want to make a noise—that he had done more for the benefit of insurance business than any other man, and that he had often tried to get on the grand jury, for the purpose, (as the witness supposed he meant,) of using his influence to prevent complaints against insuring.

According to agreement the policies were redelivered, but the insurers, conceiving that no unfairness had been practised by the witness, paid him \$260, his proportion in the insurance, and when he paid back the premium to Judah, he gave Moses, exclusive of his premium, \$100 as a compensation for his hits.

It appeared from the cross-examination of this witness, that when Judah applied to him to effect the insurance, he offered him to become equally interested; which the witness declined. He was positive that Judah said that he had dreamed himself, as before related, and not that the number had been dreamed of; and the witness himself had frequently insured on numbers in consequence of dreams, but lost.

Robert Gilchrist stated, that he had been a clerk for the managers of the present lottery since it was first instituted. During the drawing of the fourth class the managers entered into an arrangement to draw the stationary prizes from the wheels themselves; and they permitted John H. Sickels to perform this part of their duty; and he also drew from the wheel the stationary prize of \$35,000 in the Owego Lottery. During the drawing of the Medical Science Lottery, the witness had often seen Sickels, in the absence of the boy who drew at the number wheel, draw four or five numbers at a time and put them in his lap and call them off; and sometimes while the boy was drawing, the witness has observed 2, 3, or 4 numbers open, in the lap of the managers, and at other times in that of Sickels, who might, had he been disposed, call out either of the numbers in preference to the others; but it was the practice to call them in the order in which they were drawn.

On the ninth day's drawing, Sickels acted at the number wheel, which he ge-

generally attended, and received the numbers from the boy. It is a mode adopted in drawing to make a rest at the end of every hundred, for the purpose of adjusting the accounts of the numbers drawn kept by the clerks.

The insurers also attend the drawing with slips of paper or check-books for the purpose of taking down the numbers drawn: No. 15468 was drawn in the third hundred; and in its drawing the witness observed nothing peculiar.

On the evening of the 11th, Samuel N. Sharp and John Crygier, called on the witness and Mr. Gilbert, who were in the lottery room, and asked for the files of numbers drawn, and searched among them for 15468, which they could not find. The witness then took the files, and found the number, which was soiled. The next day, in presence of Thorn and other persons mentioned by him, the three numbers, 15468, 3865, and 30, were examined, and it was the opinion of all present that they were soiled; the last not so much as the two others. No. 3865 came out on the 5th, and 30 on the 7th, day's drawing.

After drawing, the wheels of the lottery, and the files containing the numbers of the tickets, are locked up in a closet within the drawing room; the key to the door of which was kept by Mr. Skaats. It had been the practice to carry the books and keys to the house of Mr. Sickels, who might have had access to the files and other papers of the lottery by procuring the key to the outer door.

Near the close of drawing of the fourth class of this lottery, the witness saw in the hands of the managers four numbers which he cannot now designate, but thinks they were all within the 14000. He understood they had been found under the stage by the boys. They were kept out of the wheel until the last day; and the witness was cautioned by the managers against saying any thing about it.

No. 15468 was here produced to the jury.

Hoffman: (to the witness,) you have examined this number: can you account for the soiling in the manner it appears in a line.

Witness: The operation of folding and putting up the numbers for the wheel may

occasion a soil in the folds; but on this number I perceive two folds, which I cannot see on the others.

Isaac Denniston, one of the managers in this lottery, informed the witness, that although he drew the stationary \$35,000 in the Owego Lottery, he owned but half; and the witness having heard much on that subject, was solicitous to know who owned the other part; Denniston said he had never been asked the question in a proper manner; and at the same time declared that Mr. Sickels owned no part of the prize, but admitted that he had lent Mr. Sickels some money. The witness had seen the ticket for this prize in possession of Mr. Allen: Denniston said that he got his money, which the witness understood as applying to the whole, of Mr. Ogden, of New-Jersey. The witness, after the drawing of the Owego Lottery, was told by Mr. Sickels, that he had to go to the bank to do some business for Mr. Denniston.

Before this publication appeared, the boys who drew the numbers from the wheels used to wear loose sleeves over one sleeve of their coats, but since, their bare arms are put into the wheel, in drawing the numbers.

On his cross-examination, the witness further testified, that during the drawing the key of the wheels, which were sealed and locked after the drawing, was kept by one of the managers, Sickels kept the key of the closet in which the wheels were deposited, and Skaats kept the key of the outer door. Some or one of the managers are present during the drawing, and the numbers being taken from the wheel are, or ought to be, called at the same time.

The witness always understood that Sickels was a deputy or assistant to take the burden of the duty off the managers. He assists in rolling up and putting the numbers into the wheel; these, after being rolled up and tied, are counted and bundled into tens; and when they are about being put into the wheel, they are counted into bundles of 1000 by Sickels and the managers, each counting for himself; and had he been so disposed, he might have kept numbers out of the wheel; for the large bundles counted by him for 1000, might have passed with the

managers, and been put in the wheel for that number, when they contained a less. And if, when Sickels had several numbers drawn from the number wheel in his lap before they had been called, there had been an understanding between himself and those who drew the numbers, fraud might be committed.

He prepared the tickets for the Owego Lottery. Denniston was not a manager in that lottery, nor was he present at the drawing.

Abraham P. Brower, on being sworn, confirmed the statement of the two last witnesses, relative to the examination of the soiled numbers, and further stated, that being engaged in lottery business, during the drawing of the fourth class of this lottery, Sickels, after inquiring of the witness whether he insured, and being answered that he sometimes did, said, that there were certain low numbers which the witness need not be afraid of, among which he thinks Sickels mentioned No. 3; but does not think he said those numbers were not in the wheel. The witness did not want the information, did not profit by it, has since regretted that it was imparted to him, and told S. that he ought not to have intrusted him with such a secret. Since the disturbance occasioned by this publication in the Chronicle, Sickels had told him that what he mentioned about the low numbers was *only in jest*.

This witness in his cross-examination stated, that he signed a certificate which was published on the day of its date, in the Chronicle and other papers.*

The amount paid Thorn, was after the rate of 10 per cent. and was equal-

ized among the insurers in proportion to the amount for which they had insured.

The witness insured on No. 3, after the information of Sickels, whenever it was required or called for; as the witness conceived that had he refused he should have been obliged to explain the reason; and on a late day in the drawing, a person having called on the witness to insure that number he did so; but the amount being so much that he did not deem it prudent to stand, he got Judah to take the insurance to the amount of \$1700; and after 15468 had been insured by Thorn on the witness, he went to Judah and he stood, or covered the insurance.

The witness, on one occasion, had a dream relative to a lottery then drawing in Philadelphia, and effected insurance on the faith of the dream.

Thomas B. Jansen testified, that during the drawing of the third class, a stranger attempted to bribe the boy engaged in the drawing, a grandson of Mr. Sickels, to show a number. The boy disclosed the affair to Mr. Denniston, and the managers sent the boy with the number to the man, who afterwards returned to the drawing room, when the boy pointed him out to the managers, who exposed him to the derision of the spectators.

After the close of the drawing of the Union College Lottery, 3d class, in 1812, No. 17 had not been called; and the witness, who attended the drawing, mentioned the fact to the manager at the number wheel, whom the witness thinks, but is not positive, was Mr. Denniston. The manager to whom the information was given, by an immediate reference to the books, ascertained that it was true, when he called out No. 17, and another of the managers, in answer, cried out blank!

During the drawing of No. 4. in the present lottery, while the boy was absent, the witness had seen four or five numbers in a handkerchief in the lap of Sickels; at another time, he drew a handful, containing as many as 100 numbers, from the wheel, put them in his lap, and called them off, one by one, to the manager at the blank and prize wheel, so that there could have been no difficulty in concealing a number.

Jackson Haines stated, that he had been

* We the undersigned, Venders of Lottery Tickets, having seen, with regret, a certain communication tending to bring our State Lotteries into disrepute, have no hesitation in expressing our fullest confidence in the integrity of the Managers of said Lottery. We therefore assure our distant correspondents, that no Lottery in the union has been conducted with more strict integrity, all communications to the contrary notwithstanding. New-York, Sept. 18. 1818.

G. & R. Waite,
S. & M. Allen,
David Gillespie,
Benjamin Crane,
J. A. Burtus & Co.
Daniel D. Smith,

Judah & Lazarus,
John Reid,
O. C. Gracie & Co.
R. Waite, Jun.
William Smith,
Abraham P. Brower.

engaged with another in the lottery business a few years ago, and that during the last winter, Sickels wanted the witness to assist him in procuring a loan of \$400 of Mrs. Bates by endorsing for that amount; asserting that he, Sickels, was to be a manager in the next lottery, when *he would do something for us*. The witness promised to endorse, but afterwards, ascertaining Sickels was not to be trusted, advised the woman to get security.

Conrad Brooks testified, that he kept a shoe store, but had bought and sold lottery tickets; and that about a year ago, by the request of Mr. Gilchrist, he discounted a note for Sickels, who afterwards requested him to get another discounted at Jacob Barker's bank. The witness did so, and carried the money to Sickels' house, who was absent; and in returning met him, when he told the witness, after some conversation, that he was to be a manager, when, (said he,) "We can play into each other's hands!"

William Smith testified, that, previous to the drawing of the stationary \$35,000 prize in the Owego Lottery, he had a conversation with Sickels, who told him that the managers had come to the determination of not holding up and showing their hands, as had been practised in drawing the stationary prizes, as it was considered by them rather degrading to their character. When Sickels drew that prize from the wheel, the witness was near him, and he did not show his right hand as usual, but put it into the wheel, and as he drew it out, the witness did not see the number in his hand, but saw him, at that instant, face to the left, towards the witness, and as he turned, brought his hand under the lappel of his coat, and then turned towards the audience.

The witness stated, that on this morning, (10th of Nov.) the stationary prize of \$50,000 in the present lottery, was drawn by the boy, who, with the sleeve of his right hand rolled up, put his hand into the wheel, drew the number, and held it up to the audience.

Mr. Judah brought the witness the certificate, signed by G. & R. Waite and others, and he signed it.

This witness, being cross-examined, stated, that he had no doubt at the time, but that the \$35,000 prize was fairly

drawn; as he had no suspicion that Sickels was not an honest man: but if the witness had not entertained the fullest confidence in him, he would not have been satisfied with the manner of drawing that prize. After it was drawn, he conversed with Denniston relative to the public opinion entertained respecting the owners of the prize: when he said, that if called on in a proper manner, he would explain.

Samuel J. Barnard stated, that, at the drawing of the lottery, he had seen the boy pick up numbers from the floor, and hand them to the managers. At the only time the witness observed Sickels acting at the number wheel, he, the witness, observed one of the other managers apparently dozing; and, at another time, when the boy was absent, Sickels drew a handful, and put them into his lap, and opened several, which were lying open before called. This had also been done at the blank and prize wheel.

Isaac Kip stated, that he had occasionally attended the drawing, and that in the fourth class, the boy was in the habit of taking out five or six numbers, cutting them open, and laying them, promiscuously, in the lap of Sickels, and that they were not called regularly as drawn.

Gilchrist, on being again called, stated, that he had once seen one number, drawn by Sickels, which remained over after the rest at 100, as before mentioned, returned to the wheel: that on similar occasions, the witness has seen numbers drawn by the boy returned; but if, at the end of the 100, any numbers which had been opened remained, they were reserved for the beginning of the next hundred.

John S. Smith testified, that he was present at the drawing of 15468, taking down the numbers as they were drawn, and that his opportunity of seeing was not very good. He thought, that the numbers in Mr. Sickels' lap did not correspond with those drawn: in other words, that the boy had drawn only three numbers from the wheel, whereas, about the time 15468 was called, there were four numbers in the lap of Sickels.

Benjamin Crane, after testifying to the examination of the suspicious numbers as stated by Gilchrist, stated, that several low numbers, among which were 3, 5,

and 6, in the fourth class, were drawn near the close of the lottery. There were fifty-two days' drawing, and three came out on the 44th day, six on the 46th, and five later.

On Saturday, at nine in the morning, the next day after 15468 had been drawn in this lottery, Judah called on the witness to know whether he intended to pay the amount insured, and he told him that it was not then determined by the insurers. After the examination, and at evening, Judah again called to know the result, and the witness told him that the insurers had pledged themselves not to pay, when he said that he regretted it, because he should have to deal as severely with the witness as the rest.

He saw the anonymous letter, and it appeared to be a lady's handwriting.

The witness, on the request of Judah, drew the certificate, signed by G. & R. Waite and others; the first part of which, until the words "We therefore," was composed by the witness, and the residue was dictated by Judah; as he said that the matter preceding those words was not strong enough.

The object of the certificate, as the witness conceived at the time, was to exculpate the *state managers* only; and he wrote and signed the certificate for the feelings of Judah more than his own.

James A. Burtus testified, that about the middle of the drawing of the fourth class of this lottery, Sickels intimated to him that there were some low numbers not in the wheel, and that Judah was acquainted with the fact.

Being cross-examined, the witness further swore that he did not mention this to the managers, but told Sickels, at the time he imparted the information, that the witness thought it wrong, and Sickels promised that he would not do it again, and this was the reason the witness did not divulge the affair. Since this publication, the witness had been told by Sickels that what he mentioned about the low numbers was not in earnest.

The information about the low numbers, by Sickels, was voluntary and gratuitous; the witness had been on terms of intimacy with him, and sometimes had lent him small sums of \$30 or \$40 without interest; but was so much surprised at the

information, that he did not know whether to believe it or not. Soon afterwards he told John Bloodgood, and, since the disturbance, has told Mr. Crane. The witness thinks that Sickels mentioned No. 3 as one of the numbers not in the wheel.

John Bloodgood testified, that Burtus, being intimate with the witness, imparted to him the conversation with Sickels.

During the drawing of lottery, class No. 3, the witness saw numbers 14234, 14265, and 14279 in possession of Mr. Sickels, on the second of which there were insurances effected to a large amount. Mr. Burtus, since deceased, informed the witness that there was something wrong; and towards the latter part of the drawing, Sickels brought those numbers in a small paper to the office of the same Burtus, and told him that he had found them under the wheel. These numbers all came out on the 52d day's drawing; and ticket No. 14279 having been purchased by Captain Wiswall, of the Paragon steam-boat, for a Mr. Livingston, up the North River, it drew a prize of \$10,000!

Being cross-examined, the witness further stated, that Burtus, now deceased, having informed Sickels that something was wrong, he afterwards came down to the office with those numbers in a paper, and told Burtus that his conjectures were right, and then showed the numbers, and said they had been found, &c.

The witness at the time thought this an honest act; but when *this* Burtus imparted to him the conversation with Sickels about the low numbers, the confidence of the witness in all lotteries was impaired.

Judah took insurances on the low numbers to \$5000; and when *this* Burtus told the witness about the conversation with Sickels, the witness said it was no wonder Judah insured so high.

Here the defendant rested.

The following witnesses were severally called and sworn on behalf of the prosecution.

General Jeremiah Johnson testified, that he had been a manager in all the classes of the Medical Science Lottery draws, and in that now drawing; and that three managers usually attended the

drawing. Sickels officiated at the number wheel in the room of one of the absent Albany managers, and has served without a bond, but not by the permission of the witness, whose confidence in him, since this exposure, has been shaken, though before this it was impaired.

During the drawing of the fourth lottery, Dr. Mitchell, and Messrs. Denniston and McLean, in New-York, attended the drawing, the two first ostener than the other.

When numbers are about being put into the wheel, the New-York managers are present: Mr. Sickels having rolled up the tickets, assists the managers in counting and putting them into the wheel. They are bundled into thousands, which are subdivided into hundreds and tens. A contract was made with him to put up the first and second lottery, and he was paid \$600 for putting up 30000; and when the third lottery was to be drawn, several persons at a meeting of the managers having applied for the station, the witness moved that Sickels be displaced, and they agreed to it; but it being afterwards considered that he was an old manager, and that it would be hard to remove, it was concluded to continue him.

The witness was present filing tickets at the drawing of 15468, and saw nothing extraordinary, though from his attention to his business, it was impossible that he should see the course of drawing. He thinks Dr. Mitchell, Mr. McLean, and himself were present; Sickels being at the number wheel, and Dr. Mitchell below him. No complaint was heard by the witness that day; but in two or three days after the managers understanding that the number had been soiled, examined it, and it did not appear to be soiled *by wearing in the pocket*; but it did appear soiled.

On his cross-examination, the witness stated, that the managers never came to the determination not to show their hands in drawing the stationary prizes.

The three numbers in the 14000, during the drawing of the third class, the witness understood, at the time, were found by the boys under the platform; and the day before the last day's drawing, they were put into the wheel by the managers, who previously took out and examined all the numbers. Previous to the draw-

ing of one of the lotteries, and after the managers, as they supposed, had put the numbers up at the house of Sickels, they found among the papers on the floor ten numbers.

This witness confirmed the statement of Gilchrist, concerning Sickels being trusted in counting out parcels of 1000; and further stated that the knives of the boys are sometimes dull, and in opening the numbers they frequently strip off the strings instead of cutting them; and that the numbers might thus be soiled in the manner represented.

Moss Kent testified, that in drawing he usually attended the number wheel, and does not recollect to have seen the boy take out more than one at a time. In 1816, during the close of the drawing which he attended, he went up to the residence of Gouverneur Morris, during his last illness; and while there, found one of the numbers, which fell from somewhere about him. The witness, though surprised, considered it an accident.

Having staid two months attending that drawing, he mentioned to the managers that he wanted to go to Washington: Sickels gratuitously offered himself to officiate in the room of the witness; and the managers not conceiving his attendance necessary, he went to Washington, and on his return, in the spring, found that Sickels had officiated, for which the witness offered him \$50, which he reluctantly accepted.

Being cross-examined, the witness stated, that he never knew or heard of any arrangement among the managers in not showing their hands in drawing the stationary prizes.

Dr. Samuel L. Mitchell stated, that he was present at the drawing of 15468, and saw nothing extraordinary on that occasion. The boys are selected at that season of life when they do not know, and are incapable of, the deceits of manhood; and Master Ten Broeck, though he had been withdrawn voluntarily by his grandfather, and another substituted, was a youth, in the estimation of the managers, wholly unexceptionable. The witness here related the story about the attempt to bribe the boy, related by Jansen.

By the mayor: In what capacity was Mr. Sickels in the lottery?

Witness : In putting up the lottery, which requires care and correctness.

Question : Had he, in consequence of his engagement with the managers, any right to sit at the wheels ?

Answer : He was allowed to sit at the wheel in the room of the absent managers. He was employed as an old manager, and as one venerable for character and years, and skilled in the business ; and he was, therefore, permitted to perform that peculiar duty which no other man would have been suffered to perform.

An arrangement was made among the managers, that after the drawing, one of them, residing in Brooklyn, should take the keys of the wheels with him every night.

The witness endeavoured to account for 15463 being soiled, by enumerating the several processes or manipulations (as he termed them) through which the number passed from the hands of the printer to that of the manager, when called out ; and stated, that the numbers being kept tied up in sheets together at Waites' warehouse, that number might have been separated from one of the soiled outside sheets.

Isaac Denniston stated, that Sickels acted as assistant manager by consent of the whole. The witness was not present at the drawing of 15463 ; but on his arrival from Albany, on the 18th of September, examined the files, and the number was indeed soiled, but not as if kept in the pocket. He had no other interest in the Owego lottery, except having purchased 10 tickets of Mr. Ogden, one of which drew \$35000 ; nor had the witness any other concern with Sickels in the fortunate ticket, except lending him \$2000, part of the amount drawn.

Being cross-examined by Hoffman, the witness further stated, that having received word at Albany, from Col. Ogden and Mr. Allen, the lottery office keeper, that the ticket had drawn a prize, the witness sold the ticket to the former gentleman, who paid a part of the money to the witness ; and a check of \$9000 and upwards ; also a part of the net proceeds of the prize, which was \$29700, having been given by Allen to the witness, he left it with Sickels, and agreed to lend him from the money to be received on the check \$2000. Since that time, and at three seve-

ral times, he had paid the witness all except that sum, which was lent for one year.

Hoffman : Have you not said that you was interested only one half in this ticket ?

Witness : I have said so.

Hoffman : To whom did the other half belong ?

Witness : I have said that Mr. Sickels was not interested ; and this I now testify : I submit, Mr. Mayor, whether I am bound to answer that question.

Wells hereupon stated, that the inquiry was useless, and had no bearing, that he could perceive, on any point in the case.

By the mayor : I think the question is proper. This is a cross-examination, in which counsel are permitted to take a much wider range than in a direct examination. This is an inquiry whether Sickels was in any manner concerned in this ticket ; and we ought not to be confined to the mere *ipse dixit* of the witness. We must probe this affair to the bottom.

Hoffman : To whom did the other half of this ticket belong ?

Witness : Mr. Mayor, I will explain : this was a mere matter of delicacy. Captain Roorbach was the bearer of the intelligence of my good fortune, from this city to my house at Albany. Being surprised at the intelligence, I walked the floor for some time before I spoke, and revolved the affair in my mind. I considered that I had a number of indigent relations to whom I should be obliged to lend this money were it known that I had drawn the whole. There was a legacy which had been left for my children, which had been squandered in relieving my relations ; and I wanted to retain at least a part of this money to replace that. I therefore declared to Roorbach, at that time, that I was but part owner ; and was obliged to declare it in a publication ; but, the truth was, *I was the sole owner*.

The witness further stated, that on his way from Albany, he intimated to Roorbach, sufficiently to be understood, that he, the witness, owned the whole ; and, when before the Grand Jury, mentioned the affair to Mr. Price, and, in confidence, requested him not to pursue the inquiry further on this point than as concerned the interest of Sickels.

The witness never knew of any ar-

rangement among the managers, relative to not showing their hands in drawing.

After stating the story about the attempt to bribe the boy, and his conduct on the occasion, which the witness thought noble, he stated that he was a perfect stranger to the managers of the Owego Lottery.

Stephen Price, Foreman of the Grand Jury in October last, confirmed the relation of the last witness concerning his statement of owning the prize, and his motive in concealing the fact; and further stated, that it was a question agitated before the jury, whether he should be required to answer who owned the other part, but that he was not asked that question; and in answer to the inquiry, whether Sickels did, Denniston answered in the negative.

This witness, on his cross-examination, stated, that when Sickels was before the Grand Jury, he testified, that during the drawing of one of the former lotteries, something, which proved to be a number, was first discovered in the crack of the floor near where the wheel sat; and a further search being made, 10 more were found. He stated that some person must have attempted to take them away from his house; but having failed in their object, brought them back.

Arthur H. Roorbach testified, that Mr. Allen sent word by him to Denniston of his good fortune, requesting the witness to tell Denniston that the money would be paid at Allens' office, and that he wished Denniston to say the ticket was obtained there.

On his arrival at Albany, before going to his own family, the witness went to the house of Denniston in a carriage, and imparted to him the news; and he then walked the floor, apparently in agitation, and at length said, "Strange, that I have been the owner of so many tickets; and now when fortune smiles, she only smiles by halves!" The witness then understood by Denniston that he owned but the half.

He came to this city with the witness the next trip; and it being supposed by many that, by reason of his having first gone to Denniston's before going to his own family, the witness owned a part of the prize, he was solicitous to know of Denniston who owned the other half, when he said, "Captain Roorbach you

know my situation: I have an expensive and needy family," &c. and plainly gave the witness to understand that he owned the whole ticket.

James Heard testified, that two or three months ago, Sickels asked the witness if he wanted any money, stating that he had \$2000 belonging to Denniston in his hands. The witness did not then accept the offer, but subsequently did, and paid the money to Denniston.

George Waite testified, that large quantities of printed numbers for the lottery, in sheets, tied together in bundles, having been printed for several years back, had lain on the shelves of his warehouse for the use of the lottery; that the outside sheets were soiled and some damaged, and that Sickels never returned any of the soiled sheets—but, (being cross-examined,) the witness did not know whether 15468 was a number cut from an outside sheet.

It appeared, in substance, from the testimony of Jeremiah I. Drake, that a short time before the latter publication, upon which this indictment is founded, took place, by mutual agreement between Baldwin, and Fay, his counsel, on one part, and Denniston, Allen, and the witness, on the other, it was referred to Allen, Fay, and himself, to examine the suspected numbers; and, on the evening of the day preceding that on which that publication appeared, the examination took place in presence of a number of gentlemen; when the numbers being taken from the files and faced downwards on a table, Fay particularly examined, and was not able, though he held them up before the window, to select either of the suspected numbers. There was a number of \$30 prizes more soiled than either of the suspected numbers.

At one time, the witness, in the park, in presence of Denniston, Fay, and others, told the defendant, that as those whose character was implicated by the course he had taken were *their*, (i. e. the witness and defendant's,) political and personal friends, that it was calculated to injure himself; and that it was a foolish thing for him to pursue it upon suspicion merely, and without evidence; and the witness then, (as he has at other times,) earnestly requested that he would agree to abandon his course. At this time he said

that he knew it was foolish, &c., and declared that if he could consistently get out of it, he would. Messrs. Fay and Denniston went apart and conversed, and returning, Fay advised the defendant to a compromise, and it was agreed that on the next day they should all meet at Fay's office, and that something should be fixed on satisfactory to all.

Mr. Fay read in evidence, from the Chronicle of the 17th of September, the following article: "*Error Corrected*. The proprietor of the Republican Chronicle, having inadvertently published in this paper of last evening, a paragraph, implicating some persons in the management of the present lottery, and having since heard that Dr. S. L. Mitchill and General Jeremiah Johnson are the only acting managers, at present, in this city, I with pleasure declare, that I have the fullest confidence in the honour and integrity of those gentlemen; and I have since been informed, from a source which I have no reason to doubt, that an investigation, with respect to the insurance, has taken place, which resulted to the satisfaction of all parties concerned.

CHARLES N. BALDWIN."

The witness then stated, that he was not certain whether this publication was after the conversation of which he had spoken or not.

Fay then read from the same paper of the 24th of September, the following article: "LOTTERIES. On this subject an investigation is now taking place, in the course of which we *hope* to prove Mr. Sickels and Mr. Judah free from imputation. They are gentlemen well known to us, and they both have sworn they know nothing of fraud in this affair. They are men of established character, and no one who knows them can doubt their veracity under an obligation so solemn.

"The public are requested to suspend opinion as to *them*, until the result of this investigation shall be known. It is necessary, and justice demands that we should again say we never intended the slightest imputation upon the purity of the managers, Gen. Johnson, Dr. Mitchill, and Alderman Denniston, Mr. Kent or Mr. M'Lean, or on the little boy, whose innocence we cannot doubt."

The witness then stated, that this pub-

lication was after the conversation in presence of Denniston, Fay, and others.

It appeared from the testimony of John I. Sickels, a son of the sub-manager, that at the time appointed, he was present at the office of Mr. Fay, when Denniston, Judah, Fay, and Baldwin, were there, and the witness explained to Fay how the tickets may have been soiled—that as they were rolled up on a wire, and tied in the family, by the father, and the sisters of the witness, and himself—as the father used snuff, and the witness smoked segars, the soil might have originated either from the snuffed fingers of the father, or from the ashes on the segars smoked by the witness while so engaged; and that the appearance of unfairness in drawing the stationary \$35,000 in the Owego Lottery by the father's dropping his hand, &c.; was attributable to a cut on his arm several years ago, injuring the tendons, and occasioning the arm involuntarily to drop after having been raised.

Fay was satisfied, and wrote the article last read, and Baldwin assented to its publication; and the former gentleman complimented the father's integrity.

Moses Allen, after confirming the testimony of Mr. Drake, in relation to the examination of the soiled numbers, stated, that at the time it was taking place, Baldwin said that the number was not so much soiled as he supposed; that he had been misinformed; and the witness thought that he was fully satisfied.

Being cross-examined, the witness stated, that he was a vender of lottery tickets—that there was a man named Woodruff at the examination of 15468, who, after several persons (and among them the witness) had tried to select the number from those which were faced downwards, offered to bet \$50 to one that he could pick out the number; when Judah told him that his interference was unnecessary, as three gentlemen had been appointed to examine the number; and, after asking him what business it was to him, called him an impertinent fellow.

Abraham Herring, on being sworn, stated, that he had been a manager in several lotteries, and that some numbers, after being drawn, are more soiled than others, and some are almost worn through.

John H. Sickels was hereupon called

on behalf of the prosecution, when the mayor stated, that being unwell, he was unwilling to take up the testimony of so important a witness as this, until the next day. Whereupon, the counsel for the prosecution produced Herman Le Roy, Peter Schermerhorn, George Warner, Dr. Peter Wilson, The Rev. Gerardus A. Kuypers, Augustine N. Lawrence, Elias Nixon, John I. Brower, and James Van Antwerp—all gentlemen as venerable in years, and exalted in character and respectability, as any in this city, who, on being severally sworn, concurred in stating that John H. Sickels was, and had been since their acquaintance with him, a man of the most unexceptionable character and conduct—that he was a member of Dr. Kuypers' church, of which he had been a treasurer for several years, and also for the corporation in building this Hall. Several of these witnesses spoke from an acquaintance with Sickels for fifty years, several for forty, and neither of them for less than twenty-five.

Isaac Denniston, on being again called on behalf of the prosecution, stated, that he was not present at the time stated by Mr. Jansen when No. 17 was wanting.

Being cross-examined by Hoffman, the witness further stated, that he purchased at auction, Waite bidding them off, fifty tickets for Sickels and the witness, to accommodate their particular friends. Of those tickets, Sickels had 30, and the witness 20, and before the lottery commenced drawing the witness sold all his.

Sickels knew the witness had ten tickets in the Owego Lottery, but did not know their numbers. The purchase of these tickets was not secret, and his name was entered as the purchaser in Col. Ogden's book.

The witness further stated, that he had known several times numbers wanting towards the close of the drawing, which were supplied. These turned out blanks.

By the Court : (to Denniston,) Have you ever heard of deficiencies in the prize wheel ?

Witness : I have : the prize of \$10,000, drawn by Mr. Livingston, was kept out of the wheel until towards the last day.

Question : Was there any inquiry instituted by the managers to ascertain in what manner or by whom this had been done ?

Answer : There was none ; because there was no source to apply to for that purpose.

Question : Suppose a number was to be kept out of the wheel, would not this affect the chance as respects the whole.

Answer : I conceive not.

Question : Would not the keeping out of a prize till towards the last day, raise the price of tickets in the hands of their vendors ?

Answer : It would.

John H. Sickels, apparently more than sixty years of age, testified, that since 1804, until this time, he had put up tickets for all the lotteries drawn in this state from that time, except those of the Union College and Literature, and was a manager in the first of that class, the last of Union College, the Black River, and Board of Health Lotteries. With regard to the 10 numbers said by General Johnson to have been found on the floor, they fell from the table by accident.

The witness never heard of the circumstance of No. 17, related by Mr. Jansen, except since this publication ; but has known of numbers falling short on the last day. The practice, among the managers, since the witness has known any thing of lotteries, is to count the numbers the day before the last day's drawing ; and should there be any deficiency, make it up. In some instances, there is no deficiency, and he never knew of more than two.

The witness was present when the \$10,000 prize, owned by Mr. Livingston, was drawn. The day previous to the last day's drawing, it being suggested that the prize was wanting, the managers opened every blank and prize in the wheel, and found this wanting. At the same time, said the witness, I declare that I saw Dr. Mitchill put this in the wheel at my house.

Jay : Will you explain about the ten numbers found under the stage ?

Witness : I stated to the grand jury there were ten ; but can now state there were only four. Towards the close of the drawing, I went into the room for the purpose of assisting, and saw Mr. Gilchrist there ; and the boys were playing, and it was said that four had been found by the boys under the stage. I looked ; and

in a crack of the floor, under the carpet on the stage whereon the wheel rested, about 18 inches from this carpet's edge, I found three or four more ; and when the managers came I informed them, and they requested me to keep them until the day before the last day's drawing. The witness did not know how the numbers came there, but had understood that the wheel had once fell, and the door burst open. The witness at this time thought there was some foul play.

Mr. Burtus, now deceased, often came to the witness and told him, that he suspected some foul play in the 14000 numbers stated by Mr. Bloodgood ; and, the same day the numbers were found, the witness showed them to Burtus, not telling him of the managers' directions ; but these were not the numbers he had been hit on.

The account given by the witness relative to locking the wheels, and the impossibility of access, corresponded with that given by Dr. Mitchill. The witness does not remember of numbers having been dropped by the boys more than once, and then they were returned to the wheel unopened ; and it is unavoidable, in drawing numbers, sometimes to draw more than one, for they will often adhere.

The managers draw 500 a day, and the drawing is only for an hour ; and while the witness has been at the wheel, the boy who draws has often been ahead of the managers. Such numbers were frequently put in a handkerchief on the knee of the witness, who called them off, as near as he could, in the order in which drawn, and never intentionally deviated.

He never called any numbers not drawn from the wheel ; and 15468 was so drawn and put on his lap ; nor has he any idea or knowledge but that it was fairly drawn, nor did he know of any insurance on that number, nor did he make any communication either directly or indirectly to Judah concerning that or any other number at any time whatsoever. The witness never kept any low numbers or any other out of the wheel, and never told Burtus that any low number was not there ; but told Burtus, as he did Brower, that there was no prospect that the low numbers would come out until the last day ; for the witness, from his experience in

putting up lotteries a long time, knew, that the high and low numbers are uniformly put first in the back of the wheel, which turns perpendicularly over, and therefore judged, from what had often occurred, that those numbers would not come out until near the close of the drawing. The witness might have told them that they need not be afraid of 2, 3, and 5, but does not remember that he particularized, and does not think he did.

The low numbers usually come out the last day, but not always.

Either Brower or Burtus asked the witness if Judah knew that the low numbers would not come out, and was answered that he did not.

By the Court : Did you not give this information for their benefit in insurance ?

Witness : I knew they insured, and thought it would be for their benefit ; but this was not my motive.

Question : Have you not since told them you was in jest ?

Answer : I have : but was sincere in giving them the information. After this I thought it imprudent, and told Burtus I was sorry ; but never told him that it was for keeping numbers out of the wheel. Since this disturbance I went to him and told him this was but in jest, because I wished to stop the noise. Both declared they had not acted from the information.

The witness had sometimes borrowed uncurrent money of them to their benefit ; for he returned current money. He requested Haines to speak to Mrs. Bates for \$400, and told him that as he was to be a manager, *he would be of service to him*—meaning in the purchase of tickets, in recommending him to the other managers, and in endorsing for him. To Mr. Brooks the witness did apply to endorse, as stated by him, and told him that as he was to be a manager he would aid him ; but never said that when a manager they could play into each other's hands.

He drew the \$35,000 stationary by holding up his hand before him, putting it into the wheel, drawing out the number, and showing the hand ; which, after the number was drawn, fell : for having cut it several years ago, the tendons of the arm were weakened.

He told Smith, that *it was his opinion* that the managers ought not to show their

hands in drawing the stationary prizes, as the Legislature had placed confidence in them, &c. but never told him of the arrangement as related by him.

During the drawing of any other lottery, or of this, the witness never owned any ticket or tickets, but has sometimes bought one for each of his daughters. He never insured, and was ever opposed to insurance : and the present defendant was once, in this court, convicted of insuring, on the testimony of the witness, who proved that the number, charged to have been insured, came out on a particular day.

He never knew the numbers of either of Denniston's ten tickets, and never went to Col. Ogden's office to inquire.

He received a check of Allens for \$9000 in favour of Denniston previous to his leaving this city, who requested him to take it for collection, which he did, and has since paid him the whole amount, except \$2000, borrowed money, for which he gave his promissory note, payable in one year from the 24th of June last.

The witness had been laid under a temporary embarrassment about a year ago, by reason of having endorsed for his friends to \$10000, who failed. The Mechanics' Bank, on his request, had consolidated the demands, and gave time ; and he had paid about half ; the other being secured by mortgages on his property.

While engaged in drawing, the witness never took more than 20 numbers from the wheel at a time himself—never took any when the boy was present ; and the reason of doing this was to save the labour of rising often, and to shorten business. The witness did not conceive it an injury ; and the managers who have been present have never made any objections, nor did they find fault with the constant practice of returning those numbers into the wheel which happened to be on hand at the rests at each hundred.

By the Court : So that a man's ticket, corresponding with one of these numbers, remaining over, and which might, had it been called, been entitled to a prize, might, by reason of its being returned, remain in the wheel a week afterwards for a second chance ?

Witness : It might : but if this practice, of drawing more than one at a time, had not been pursued, the drawing could not have been effected in an hour.

By the Court : The statute does not require that a particular number should be drawn at a specific time : this is left to the discretion of the managers.

The witness, in his cross-examination, which was conducted by Ogden, stated, that he told the Grand Jury that he had found ten tickets in the crack of the floor, but after going home he recollected and found that he had been mistaken. Gilbert or Gilchrist was there when he came in, and understanding that the boys had found the numbers under the stage, instead of looking there, lifted up the carpet and found three or four more. The witness does not remember which of the managers was present, but he thinks he mentioned it to one or more of them when he next saw them, but is not positive ; and he believes, that from the day the numbers were found until the last day's drawing, several elapsed, and is sure one did. He cannot remember which of the managers requested him to keep those numbers out of the wheel.

He showed them to the late Burtus, because he said he had been injured by insurances on 14000 and odd.

By the Court : Did it not occur to the managers, that if those numbers were kept out of the wheel the purchasers of the corresponding tickets would lose their chance ?

Witness : I don't remember any conversation among them on this subject.

Ogden : Was you not at Judah's, late at night immediately preceding the day 15468 was drawn ?

Judah and myself were never together late that night, or any other that I remember.

Question : Do you know, or have you any reason to believe, who was the writer of the anonymous letter to Judah ?

Answer : I do not know who the writer was : I saw it after it was received, and my grandson took a copy.

The witness, after the stationary \$35,000, had been drawn in the Owego Lottery, understood there were some suspicions of unfairness, and when the stationary \$70,000 was to be drawn, pro-

posed to Stewart, the New-Jersey manager, to draw that prize, as a compliment to those managers : but the previous suspicions against the witness, did not influence him to decline drawing the last mentioned prize ; for he was conscious of his own innocence.

By the Mayor : Mr. Sickels, since you have been a manager in lotteries, have you ever purchased and held any ticket or tickets in the same lottery of which you was manager ?

Answer : I never purchased or held any ticket or tickets for myself in any lottery of which I was manager.

Question : Was you not in one of the lotteries, of which you was manager, a *secret contractor* for almost all the unsold tickets ?

Witness : (dropping his head,) I was : but I did not at first recollect this. It was in one of the literature lotteries of which I was a manager. William W. Gilbert, though a manager, was not interested ; but Anthony L. Bleecker, Isaac Clason, James Arden, Peter Curteneus, and another with myself, were secret contractors for 20000 unsold tickets, the interest in which each had an equal share.

Question : Did not one of these tickets draw a high prize ?

Answer : One of them drew a prize of \$30,000 on the last day's drawing, and I had one sixth part of the money.

The court hereupon referred to a statute, passed April 8th, 1805, (L. N. Y. Vol. 4. p. 235. sect. 9.) prohibiting "any person or persons being a manager of any lottery within this state, directly or indirectly, to contract for or be concerned with any company or companies in contracting for any part or portion of the tickets of the said lottery of which he or they are managers"—but it appeared, and was admitted on both sides, that the time referred to by the witness when he was concerned as a secret contractor was before the passing of the act.

The counsel for the defendant here put a number of questions to the witness, touching his conduct as Treasurer of the Dutch church, which, with the answers, are not material.

By the Court : What did you mean just now when you was asked whether you ever purchased and held any ticket or

tickets in any lottery of which you was manager, in qualifying the answer by saying, "*I never held tickets for myself?*"

Answer : I meant by this qualification that I had purchased tickets for my daughters, as I before stated.

By one of the Jurors : I think you said when you found the tickets under the carpet you suspected fraud. Did you ever impart those suspicions to any of the managers ?

Answer : I do not remember that I did.

Benjamin Hart testified, that he was one of the clerks at the drawing of the stationary \$35,000, and believes that Sickels drew it, holding up his hand as usual.

Isaac Moses testified, that on the morning of the 11th of September, at about eight, Judah called at the lottery office of Thorne and the witness, and Thorne not being in he was sent for, and when he came, Judah wanted him to get insurances on 15468, informing him that this number *had been dreamed of*, and not that he, Judah, had himself dreamed of it ; and of this the witness is positive.

Judah gave Thorne \$110, as the premium for the insurances, telling him, at the same time, that he might be interested to half the amount ; but he declined, and took, in company with the witness, \$250.

Being cross-examined, the witness stated, that Judah gave him \$100 in presence of Thorne, from kindness, and because he, the witness, had been deprived of his proportion of the amount insured, by the refusal of the insurers to pay. The witness saw the anonymous letter on Monday ; and does not think that Judah mentioned to him any thing about the letter till that day.

Samuel Healy testified, that he had a conversation with the defendant on the subject of being a witness, when he cautioned the witness against saying that the suspicious numbers were not as much soiled as the others, and threatened, if he did, to publish him in his paper.

The witness had frequently insured on dreams—it is constantly done, and he would have done as Judah did in insuring 15468. All over the city, women, particularly, who are in the habit of insuring, refer to the dreams of themselves or others, or to any ridiculous oracle.

In the 4th class, the witness dreamed about No. 14 : the witness insured, the number came out, and he got \$500.

Gilchrist was here again called on behalf of the defendant, and testified, that he had not long been acquainted with Thorne, but from what the witness had heard or known, he believed Thorne's character, for truth and veracity, good.

The witness never heard, before this disturbance, that any numbers were taken up by Sickels from the crack of the floor ; but did learn from Mr. Gilbert, that four were found by the boys under the stage, which he understood were given to Mr. Sickels, to be kept till the last day's drawing.

Gen. Johnson being again called on the same side, testified, that he was not present at the time the boys found the numbers ; but never heard of Sickels' finding any numbers in the crack of the floor, until he heard of it before the grand jury. It was the opinion of all the managers, at the time, that those numbers found by the boys were not dropped on the floor ; but that it must have been done by some rascal who wanted to impose on the managers. It was the opinion of the witness, and is now, that those numbers either were never in the wheel, or were taken out by some rascal, and they could not, accidentally, have got from the wheel into the crack of the floor.

Martin Tooker was sworn on the same side, and testified as to Thorne's general good character.

Joseph Burjeau, sworn on behalf of the prosecution, testified, that shortly after he heard of 15468, he met Thorne in Vesey-street, who stated that Judah had called on him in the morning, and requested him to get that number insured ; and that he said that it was a *number dreamed of*, or something to that effect ; and not that he dreamed of it himself. The witness, as is common, has insured on dreams.

John W. Gilbert, sworn on the part of the defendant, testified, that at the time the numbers were found the boys were in the room before the witness came ; and they told him that they had found several numbers under the platform. The witness believes that Mr. Sickels did look under the carpet ; the witness did

himself, but found none, nor did he hear Sickels say at the time that he had found any numbers in a crack, or under the carpet. There might have been six or seven found, but the witness did not *then* hear of any except those found by the boys.

George Waite, again called on behalf of the prosecution, stated that Denniston at first told him that he owned but half of the \$35,000 prize ; but on being pressed gave the witness clearly to understand that he owned the whole.

Naphtali Judah, sworn on the same side, testified in substance as follows :

On the morning of the 11th of September last, at about 8 o'clock, the 9th day's drawing, I went to Messrs. Thorne & Moses' office, and found Moses, but Thorne was not up. Moses sent for him ; and he came down, when I told him that I wanted him to get a number insured for the same day, at the different offices ; and I gave him \$110 as the premium to be laid out for insurances. The number was 15468, which I told him had been dreamed of, and not that I had dreamed of it myself.

The evening before this I received an anonymous letter which, in my absence, had been left, as I understood, by a boy who was unknown. After my publication on the 29th of September, conceiving that this letter could be of no use, having shown it to the managers and others, I destroyed it. The letter, as near as I can remember, was in these words :

" Dear Sir,

" Your friendly and benevolent disposition, induces me to inform you that I dreamed that ticket No. 15468 will be drawn on the 9th day's drawing. I inform you that you may profit by my vision.

(Signed)

A FRIEND."

By the Court : This letter said nothing about the number's being dreamed of twice in this Hall ?

Answer : It did not : but it induced me to insure as I have related. I told Mr. Thorne that he might be interested one half if he chose, which he declined ; and Moses and himself concluded to take \$250. On the same evening, between 9 and 10, as I was going home, I called on Mr. Thorne, and said to him that we had hit them ; to

which he answered, that there was some difficulty, and that the offices would not pay, as there was something wrong. I replied that I did not know there was any thing wrong, and that I would be the last man to do any thing unfair. He asked me to come into his house; I did so, when he told me there was to be a meeting among the insurers, and they were to come to some determination. I was told the next morning, by Mr. Jansen, or some other person, that 15468 was soiled, and that they were determined not to pay. In the evening, I went down to Daniel D. Smith's, and after some conversation, he settled with me, and asked me for the policies, and I told him they were with Mr. Thorne, and he would not give them up, and one or two others called at my house to settle with me. At first, my determination was to make them all pay, because I knew my conduct fair, and considered that it was ungentlemanly in them for having met without sending for me.

On the next day, however, I called on Smith, returned him the premium, showed him the anonymous letter, and told him that if there was any suspicion, I would not take a dollar from any man: at the same time, requesting him to call a meeting of the insurers at his house next morning. At that time he convened the gentlemen together, and I came accordingly. After some conversation, I took the letter out of my pocket, read it, and told them that it was on the faith of that letter I caused the insurance to be effected; but that if the number was soiled, I would abandon the insurance. They were all perfectly satisfied, and deputed Mr. Burtus to communicate the sense of the meeting to myself and Captain Myers, my friend, and afterwards Mr. Burtus sent the following communication to me:

The witness here proceeded to read the communication, but this course being objected to, he stated its substance; but as it is short it is inserted:

"New-York, Sept. 17th, 1818.

"Mr. N. Judah,

"Dear Sir,

"The following is the copy of a letter sent to your friend, Captain M. Myers. Respectfully yours,

JAMES A. BURTUS."

"New-York, Sept. 15th, 1818.

"CAPTAIN M. MYERS, *

"Dear Sir—The explanation made by Mr. N. Judah, at the meeting of the Lottery-Office keepers, yesterday, was perfectly satisfactory to all concerned, and Mr. Judah was exonerated from all impropriety of conduct. Respectfully yours, in behalf of the meeting,

JAMES A. BURTUS."

The publication of Mr. Baldwin having appeared, I thought proper to come forward with mine, which was published in the *Columbian* of the 29th of September.

There has never been any communication, either directly or indirectly, between Mr. Sickels and myself as respects 15468, or any other number in this or any other lottery.

In class No. 4 of this lottery, Mr. Brower hit us for \$1700 on No. 3. which came out on the 44th day's drawing; and on that number we were hit \$2650: Burtus for \$100, Brower for \$1700, Baldwin, the defendant, for \$600, and Crane for \$250; and on recently looking over our books, I find that it was insured higher that day than any other: but I made no insurance for myself on that or any other. I suppose I lost, over and above the premium, \$1500.

The nature of the undertaking on behalf of the insurance offices is, that if the number comes out on the day it is taken for, then the office keeper is to pay the amount for which the number is insured—in other words, the insurance, on their part, always is against the number's coming out. We do not insure for A, B, and C, or individuals, but when other offices, who insure for these, are surcharged, they come to our office, and we stand the books.

This was an additional reason with me, which induced me to settle with these gentlemen; for, having been long connected with them in business, I was anxious to avoid any difficulty with them; but I knew of no fraud relative to that number, for if I had, I should never have insured. The letter was destroyed after the investigation by the managers, and when I thought it useless to retain it.

The witness hereupon stated, that he was present at the examination of 15468.

spoken of by Mr. Drake, with whose account the witness coincided.

The evening after the examination took place, Messrs. Fay and Baldwin said they were perfectly satisfied, and promised to come the next morning to Mr. Fay's office, and requested Mr. Drake to draw up some paper for publication which would be satisfactory to all concerned.

Mr. Brower put off on our office \$300 on 15468; and immediately after the drawing, I paid him the money, out of which he sent back but \$270; alleging, that the offices which had insured for Thorne had agreed to contribute 10 per cent—thus making us contribute by retaining \$30.

Sickels, on being again called on behalf of the prosecution, stated, that he did not recollect of having ever, during any drawing in the Medical Science Lottery, taken any numbers from the wheel and put them in his lap; and does not think he did this in any other except the Owego Lottery.

By the Court: Why did you do it in this lottery?

Answer: Because, it was too laborious to draw the numbers one at a time in this lottery.

Question: Why more so in that than the others?

Answer: I do not know that it was.

Question: For what reason, then, was it done?

Answer: I did it without any particular motive, and for my own accommodation.

Here the testimony on both sides closed.

Hoffman said, that this was a cause, in the result of which the jurors and every other citizen in this community were deeply interested, and in which the character of the state and its public servants was concerned. In the remarks which he should offer for the consideration of the jury, he should be as brief as possible, and in discharging the duty of an advocate, should endeavour "Nought to extenuate, or set down aught in malice."

He should call their attention, in the first place, to the publication: The charge in this is not derogatory to the honesty and integrity of the state man-

agers, as the indictment alleges. But it was incumbent on him to say, and the testimony warrants the declaration, that these gentlemen had departed from the line of duty which the law requires.

But Mr. Baldwin, in this indictment, is charged with having made this publication maliciously. The counsel trusted, that the testimony in this case had convinced the jury that the inference of malice is rebutted.

As the law relative to lotteries might not be familiar to the jury, he would, for a moment, recur to the statute prescribing the duties and imposing the oath on the managers of lotteries, for the purpose of ascertaining whether Messrs. Sickels and Denniston had not been guilty of a gross violation of their official duty. He would, in the first instance, recur to the oath which the act prescribes, and then inquire whether Mr. Denniston, in purchasing tickets for himself, or others, did not act in direct violation to the spirit of that solemn obligation.

"I do solemnly swear that I will well and faithfully execute the trust reposed in me, as one of the managers of the lottery, or lotteries, established by law, without favour or partiality, and that I will not, directly or indirectly, authorize or permit the sale of any tickets in any such lottery, in which sale or sales I, or any person at my instance, or on my behalf, shall be, directly or indirectly, benefited or interested, or entitled to any profit or advantage thereon."—(1 Vol. R. L. p 270, sect. 2.)

By this oath, the legislature intended to interdict the managers from selling tickets, or suffering them to be sold for their own benefit; and the obvious meaning of the statute is, to prevent the managers from being concerned in interest, either directly or indirectly, in the purchase of tickets.

In a subsequent section of the act, it is provided that the managers shall, for the space of sixty days after opening any lottery for sale, sell the tickets at the original price, without credit, and at the expiration of sixty days, or within ten days thereafter, shall expose for sale, at auction, in New-York, the tickets remaining unsold. And these, after the notice prescribed in the act, are to be sold

in parcels not exceeding fifty. (R. L. p. 271, sect. 5.)

The counsel argued that, according to the plain interpretation of the act, and contrary to its spirit, Messrs. Denniston and Sickels had permitted the parcel of fifty tickets to be sold, as disclosed in the testimony.

The managers, without any legal authority, had substituted Mr. Sickels in their place, and had delegated to him the most important and delicate functions of their office; and they put it completely in his power to play what tricks he pleased—whether he did so or not, the counsel would presently inquire.

For what are managers paid, but to perform the duties of their station? And why did they confide the discharge of those duties to this Mr. Sickels, or any other man, as a sub-manager, however exalted may be his standing and character? But we find this man, whom the law did not know—on whom no oath was or could be imposed, and on whom no responsibility rested, actively engaged in putting up the lottery, in managing at the wheels, and in the most minute details of that business, the performance of which had been imposed by law on the managers.

And they say that five hundred are drawn in an hour—that *mistakes* will happen—and they will so, truly, when they manage in this manner for the purpose of expediting their business.

We cannot proceed a step in this cause—we cannot view it in its most favourable aspect, without discovering the carelessness and mismanagement in the conduct of the legal managers. The defendant, as to these gentlemen, had said no more. He says to them, In drawing your lottery, adopt the European mode—let your boys do as they do there, and mistakes will be avoided: for, in the manner you manage, a door is opened to fraud.

We have it in evidence, that the numbers were drawn from the wheel and placed promiscuously in the lap of Mr. Sickels. That this was not seen and prevented by the managers was evidence of gross neglect. To what extent of mischief *might* not this practice lead, and to what did it lead? Numbers were often found wanting in the wheel—sometimes

they were found concealed, and at one time a prize of \$10,000, by some means, found its way out of the wheel! How did it find its way out—and could this extraordinary occurrence have taken place without carelessness?

The charge of *fraud* in this publication is confined to lottery management; nor does the defendant undertake to impeach the integrity of the state managers.

And here the general inquiry presents itself—whether the evidence will not warrant us in saying, that fraud in lottery management *somewhere* exists.

The counsel did not mean to charge either Sickels or Judah with a wanton deviation from truth in their testimony: but without shrinking from his professional duty, he did intend to show the jury that there was fraud, and he should proceed to probe it to the bottom.

Fraud in its progress is devious, and its operation is in secret. To establish it, we seldom have direct proof, but must resort to that which is circumstantial.

In this case, he should undertake to locate the fraud, and to show the jury the individuals by whom it was committed.

Mr. Judah knew that 15463 would be drawn on the ninth day's drawing—if he did know, he must have had a confederate—and that confederate must have been Sickels.

On the morning of the 11th, Judah, according to his own testimony, first met Moses, and then sent for Thorne, for the purpose of having insurance effected by him on that number. And why did he engage Thorne instead of Moses? According to the testimony of Thorne, the reason assigned by Judah was, that the insurers should not come back on him. Moses was known to be in the interest of Judah—when he insured, it was for Judah, and therefore, Thorne, who would not be suspected of being an agent of Judah, was deputed.

He said he dreamed he was in the hall and heard the number called, and dreamed the same dream the second time. The circumstance of this dream was extraordinary, and was so peculiar, that it was calculated at the time to make an impression on the mind of Thorne; and the relation which he gives is either true, or he has been guilty of deliberate

perjury. His testimony on this point is positive, and he stands before the jury either as speaking truth or falsehood.

A short time after the insurances were effected, Thorne imparted to Judah that the number was suspected, and that the money would not be paid. He falls in a passion, and threatens to blow out the brains of any one who should accuse him of unfairness.

He calls on Crane, and manifests the same determination; but when a public disclosure takes place; when it is ascertained beyond a doubt that the number is soiled, and that at the juncture when this suspicious number was said to have been drawn, four were called from the sub-manager's lap, whereas only three were drawn from the wheel, then Judah finds the charge come home upon him.

Then, and not till then, the bold Mr. Judah comes calmly to those whom he was ready to shoot, and talks about his friendship towards the fraternity, and of his efforts to get on the grand jury for their benefit. He finds himself suspected—he abandons his insurance, and receives his premium; and to prop up his character, procures the certificate.

Now, from this conduct alone, are we not warranted in saying something in this affair was, to say the least, strange and mysterious? But we next hear that he insured not from his own dream, but from that of a friend. A vision is resorted to: an anonymous letter is received, of which an unknown boy was the bearer, and that letter too from a female hand. But, if received, where is that letter? It is in vain he tells us it is destroyed. The very document, on which a satisfactory explanation of his conduct depended, is destroyed, and at the very time he was distanced. It cannot be. There is no man in his senses can believe, that the letter was honestly received and is now destroyed. If it had been written from a sense of obligation for acts of former kindness and benevolence, as it imports, why, on this occasion, does the writer withdraw, when her friend is so much in need of assistance? Is it from motives of delicacy, by reason of her sex, that the writer does not appear to unfold this mystery—and if so, would not the jury be highly gratified by the perusal of the

letter? It cannot be: the very thing on its face is perfectly incredible.

But Judah, though most deeply interested in the result of this trial, had been admitted as a witness, and the jury are to determine on the degree of credit to be attached to his testimony. Whether this was the dream of Judah or of his friend, the thing dreamed of certainly came to pass! Can any one on the jury believe but that, at the time the number was insured, Judah knew that it was to come out at the time it did?

But there is another mystery in this strange affair. It is in evidence, that when Thorne returned the money from the insurers, at a time this affair began to assume a serious aspect, hush money was resorted to. Moses had lost nothing in the concern—he was paid \$100 dollars by Judah. But it is said this was from kindness and benevolence. There was another motive: Judah found that Thorne was not the willing instrument which could be rendered subservient to his views. This statement of Thorne was to be disproved; and, therefore, Moses was to be secured.

When we can bring ourselves to the conclusion that Judah did know that this number would come out on the ninth day, then the fraud of Sickels is obvious.

Let it be remembered that the child is acquitted of all blame. Who was to draw the number? Who had access to the number-wheel but Sickels? And when we have established the knowledge of Judah, the guilt of Sickels is inevitable. That he had the ability to keep this number out, had he been so disposed, cannot be doubted. And here it is immaterial for us to inquire at what stage in the drawing the number was taken from the wheel, though it is the most probable it was on the eighth day's drawing; nor is this a question about blanks and prizes; but the question is whether a particular number would come out on a certain day in the drawing.

It is in evidence, by the testimony of Smith, that according to the appearance when the number was drawn, he thought the boy took out only three, and four were called from the lap by Sickels. Did this part of the case rest on this single fact, perhaps it ought not to be insist-

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It is in evidence, by the testimony of Smith, that according to the appearance when the number was drawn, he thought the boy took out only three, and four were called from the lap by Sickels. Did this part of the case rest on this single fact, perhaps it ought not to be insist-

ed on ; but when combined with the other strong circumstances, the conclusion of fraud is irresistible.

It must be admitted, that the testimony of Sickels astonished every one who heard it ; and whatever may have been his character, it is this day destroyed for ever.

When the inquiry was put to him whether he ever owned or was interested in any tickets in any lottery of which he was a manager, he answered that he never owned any *for himself* ; but finding the inquiry pursued by one acquainted with the fact, he admitted, that himself and five others were secret contractors for 20000 tickets, one of which drew a prize of \$30000. He a manager, and yet a secret contractor ! And is this man, who is thus constrained to proclaim to the world, that he violated his oath on one occasion, to be believed on another ? What man of morality, of integrity, and of honour, as a number of gentlemen, the most venerable of any in our community, have represented him to be, would do as he has done ?

This testimony of character, however useful on some occasions, cannot stand in opposition to established undeniable facts. There is scarcely a criminal convicted at the bar, but may produce a number of witnesses to swear to his good character ; but it is as well the language of the law, as of the most enlightened reason, you shall not be permitted to put *character* against *fact*.

Was he not then a man, likely to do such an act, and is it not probable, that he might have been a tool of Judah ?

To speak of gentlemen highly respectable in this community, intrusted by the government with the discharge of important official duties, and with whom the counsel had long been in habits of intimacy, was to him a painful task ; but however painful, while he remained an advocate, he should never shrink from his professional duty.

Mr. Denniston is a manager, and as such, has sworn to perform his duty, according to the act, which had been read to the jury. Instead of this, without any legal authority, he substituted Mr. Sickels to perform all the duties of a manager. In defiance of that oath, he selected a

man who had been a secret contractor for tickets in a former lottery.

It was not for the counsel to say, who were the proprietors of the \$35,000 prize in the Owego Lottery. The circumstances connected with that transaction were, to say the least, suspicious ; and the conduct of Sickels in the drawing that prize, and handling the money afterwards, whatever may be the explanation, was still more so. But the counsel did not conceive it necessary for the purpose of exculpating the defendant, to prove Denniston guilty.

The counsel proposed to return to the testimony of Sickels. He told Haines, that if he would use his influence to get a sum of money, as he, Sickels, was to be a manager, *he would do something for him*. This he denied ; but even the offer made, according to his own statement, would not help him, consistent with his oath, as a manager.

The proposition made to Brooks, by Sickels, of "*playing into each other's hands*," is also denied, but his explanation, even if true, does not exonerate him from blame.

The testimony of Burtus was important, and, if believed, the character of Sickels for honesty and integrity was ruined for ever. He intimated to this witness, that certain low numbers were not in the wheel ; and thinks he mentioned No. 3. And what is the excuse ? Why, that from his experience for a great number of years, as the high and low numbers were put in the back of the wheel together, he had observed, that the low numbers generally came out towards the close of the drawing ! This miserable evasion will not do ; but if even what he stated be correct, then the managers have been guilty of the grossest neglect, and himself of the most heinous misconduct.

Afterwards he told Burtus, that he would not impart to him such information again ; then, that he was not in earnest ; and now he tells the Jury he was !

It is in evidence, that in the third class there was an insurance on No. 14234 to a large amount ; that it was suspected, and that Mr. Burtus imparted those suspicions to Sickels, who afterwards, and a day or two before the drawing, brought him the numbers found. Now, is it not

a little singular, that the three numbers in the same thousand should have been insured, and these numbers, too, out of the wheel? Has it been satisfactorily explained why they were kept out? It was said, at the time, that the boys found four under the stage: Sickels swore before the Grand Jury, that ten were found under the stage, and now he says three or four were taken by him from the crack of the floor. But is it not most extraordinary, that this very singular occurrence, if true, should not have been imparted to the managers? He said Messrs. Gilbert and Gilchrist were present, and he thinks he imparted the circumstance to the managers; but Gilbert, Gilchrist, and Gen. Johnson all concur in stating, that they never understood that any tickets had been found by him in the crack of the floor.

The counsel spoke in terms of pointed reprobation of the conduct on the part of the managers and insurers, when the disclosure first took place, respecting the soiled numbers, in endeavouring to smother the inquiry, and to bring into their aid private friendship and political considerations. The numbers were soiled, and the managers themselves knew it; for Gen. Johnson, though he says 15468 was not soiled *as if worn in the pocket*, admits that it was soiled. The attempts on the part of the prosecution, to account for the soil, by showing the various manipulations through which the numbers passed, were fanciful and visionary; but even this might have passed, had it not been for the previous facts; and when we have the soiled numbers before us, and examine them, who can say that they do not exhibit the evidence of fraud?

The counsel concluded by saying that the defendant had brought to light a scene of the most nefarious fraud and iniquity that had ever before been exhibited to this community. To him the counsel was a stranger; he knew him not until he was engaged in this defence. He had no feelings to gratify, and was actuated by the sole motive of aiding the cause of truth and public justice. The result of this trial he hoped would afford a remedy to the evils which, in the progress of this cause, had been exhibited, and would teach those who had thus dared to vio-

late their duty as public servants, that they could find no relief in a court of justice for an exposure of their conduct: while he who had dauntlessly, fearlessly, and against a host of opposition, dared to make the exposure, deserved the approbation of his fellow citizens.

Ogden said that this cause presented an extraordinary aspect. Men who had abused and insulted this community had arrayed the body of the people against an innocent and an unoffending individual; and this was rather a trial against themselves, to test their own character and conduct.

The counsel would endeavour to show the jury, that there had been fraud practised in the management of lotteries in this state. He then adverted to the facts in relation to 15468—the dream—the anonymous letter and its non-production, and contended from all the circumstances connected with that transaction, that fraud was apparent.

But, it will be said, that on a diligent examination on behalf of the insurers and the defendant, all were *satisfied*; but the counsel apprehended that the question for the jury was—whether *they* are themselves satisfied?

He concluded his remarks on this branch of the subject by saying, that if there was a fraud in relation to that number, Judah must have had a confederate, and that could have been no other than Sickels.

The counsel regretted that he was impelled, by his professional duty, to speak of this man—his connexions were highly respectable in this community—he was a member of a church; and his character was fully supported. And the jury would be asked, what could have been his motive for keeping this number out of the wheel? That motive rests between his Maker and himself.

The managers and the little boy are acquitted, on all hands, of any knowledge or participation in fraudulently taking and keeping numbers from the wheel. Sickels, the managers, and the boy, were the only persons who could have been privy to the transaction, and, therefore, it must have been Sickels.

He swore coolly and deliberately, that he was never concerned in any ticket, for-

himself, in any lottery of which he was a manager; and yet he tells us he was one of the secret contractors for 20000! Could he have forgotten when the inquiry was first made? It is impossible.

The counsel proceeded to the disclosure made to Burtus and Brower relative to the *low numbers*, by Sickels, and to his inconsistent and contradictory statements to these gentlemen—to the managers—to the Grand Jury—and to the jury on this occasion.

The facts in connexion with this transaction manifested fraud; and if *no motive* is assigned for his conduct on his behalf, the jury may do so for him.

But again, one of these low numbers kept out of the wheel till the last day's drawing happened to draw a prize of \$10000.

The counsel contended, that the offers of Sickels to Brooks and Haines, and the facts connected with the drawing of the \$35000 prize, afforded strong circumstances of fraud.

Mr. Denniston had been called, on behalf of the prosecution, in aid of Sickels, to show that he was not concerned in the stationary prize; and how does Denniston stand before us? He tells us, for that is the amount of his statement, that he has hitherto told a direct and deliberate falsehood; and it is certain, that he prevaricated before the Grand Jury: Mr. Price tells us that it was a question before the jury, whether they should ask Denniston who was interested with him in that prize. It is, therefore, certain that, from his statement, the Grand Jury believed that he was the owner of *part of the prize only*: and such was the belief he intended should rest on their minds. If, therefore, the jury suspect a man in one part of his relation, can they believe him in another? There was not a man on the jury, who did not believe, from the first part of Denniston's testimony, but that he was the owner of one part of the ticket only; yet, when the court decided that the inquiry which he was unwilling to answer was proper, and he was sifted—then he was the owner of the whole!

The counsel having animadverted on the above particulars and others on the subject of fraud, earnestly hoped that the

evidence on which he had commented would not strike the minds of the jury as it did his; for, according to the law on this subject, it was not necessary for them to bring their minds to the conclusion, *that fraud had actually been perpetrated* before they could acquit the defendant. For if there has been no fraud, still, should the jury believe that there has been carelessness and mismanagement in our lotteries, on that ground he is entitled to an acquittal. And, at any rate, before the jury can convict him, they must believe that in this publication he has been actuated by *malice*.

Jay said that the principal allegation charged in the indictment, was that there was a deep laid scheme of villany and swindling in the management of the present lottery, of which the gentlemen named in the indictment were the managers. The opposite counsel had endeavoured to place the defence on the ground that as fraud has been established against persons concerned in the management, that the defendant is to be exonerated. But it does not follow, that because fraud has been committed by others on the managers, that he is justified in making this publication.

But it is said that there is evidence of gross neglect on the part of the managers in appointing a sub-manager.

The counsel averred that they were authorized by law to appoint such persons for assistants in the details of the business as they deemed necessary. And if they had this right, could they have been more judicious in their selection, than on this occasion? Could they have found a man of a more unexceptionable character, for honesty and integrity, than Mr. Sickels?

The lottery contained upwards of 30000 tickets; and that among so great a number, there should have been no mistake—no accident happen, would be almost miraculous.

An attempt had been made to throw suspicion on the management of lotteries, and a charge of fraud had been made against Mr. Denniston because he drew a prize of \$35000. But where is the evidence of fraud? The only direct evidence by which this charge is attempted to be supported, is the statement of

Smith, and his testimony is reconcilable with that of Sickels. He states that from a wound which has injured the tendons of his arm, it dropped in the drawing; and that it did drop, is the only material fact in Smith's testimony.

But the opposite counsel had endeavoured to draw an inference of fraud because Mr. Denniston said at first that he was the part owner of this prize, and that now he avows that he was the sole owner. But does it follow that because he resorted to an innocent artifice, for a specific purpose, that he has been guilty of fraud and perjury? But his testimony is amply supported by Mr. Waite and Capt. Roorbach, to whom he imparted the fact as he relates it now; and if, as the counsel say, he prevaricated before the Grand Jury, he did not to those witnesses.

But there is a striking circumstance which clearly shows that Sickels could not have been a partner; for we find him about this time embarrassed for money: this negatives the idea that he was interested in the prize.

Another charge is made. It is said that, as by law the manager of a lottery is prohibited from purchasing or being interested in a ticket, Mr. Denniston is guilty of a violation of his oath by the purchase of fifty in connexion with Mr. Sickels. It appears however, that these tickets were not purchased for either of those gentlemen otherwise than as the agents for others.

The opposite counsel had laboured to show that Mr. Sickels, as a sub-manager, *might* have committed fraud. The same remark was applicable to every official character in the country; but it did not follow that because they *might* have committed fraud, therefore they did. We know from experience, that groundless suspicions may be, and have been, excited against public officers of the most exalted character and of the purest integrity. But if these popular prejudices are ever to find their way into our courts of justice, dreadful will be our condition. It is said a combination of circumstances may amount to proof; but these must be such only as are consistent with the fact.

The principal witnesses to this pretended fraud say, they have investigated

the affair, and that this lottery has been conducted with integrity; and their testimony is now relied on to show that what they have hitherto said is untrue. What had happened, since their certificate, to give them a different opinion, was difficult to determine. And from a publication made by the defendant himself, since that upon which this prosecution rests, it appears that the witnesses, whom he now attempts to impeach, were then entitled to full confidence under oath.

There was no other basis to this defence except *suspicion*; a host of circumstances are arrayed against the integrity of Mr. Sickels, and every little accident, which may have occurred in the discharge of his duty for several years, is magnified into a crime.

To one, it is said, he told that he need not be afraid of No. 3.; and to another, that several low numbers were not in the wheel. The explanation given by Sickels, and his account of the theory on which the suggestion was founded, precludes the idea of fraud. He was, no doubt, confused on a long and critical cross-examination; but this does not show that he was guilty of falsehood or prevarication. But it appears that neither Judah nor his friends profited by insuring this number; but, on the contrary, on this number he lost a large sum of money: therefore, *he* was not a party to any confederacy. Besides, Sickels was to derive no gain, no advantage, by imparting to them this information; and therefore to have kept these numbers out of the wheel was madness in the extreme.

But the offer to Haines is relied on to show a disposition, on the part of Sickels, to commit fraud: and yet Haines, who might have derived an advantage from this fraud, refuses to endorse for him to the amount of \$400.

It is asserted that he contradicted himself by stating before the grand jury, that he found ten tickets, and, on this occasion, that he found four only. It was as well for him, had he not intended to adhere to the truth, to have stated before the grand jury that he found only four, as that he found ten; and here, he would no doubt have adhered to the same number.

The only direct testimony on the grand

charge of fraud, in relation to 15468, is that of Smith. He does not know that he saw—he doubts—he hesitates, and acknowledges that *his opportunity for seeing was not very good*. He was taking down numbers. Can the jury place any reliance on such testimony?

The testimony of Judah was consistent in all its parts, and entitled to full credit. His relation is fully corroborated by Moses; and though contradicted by Thorne in one particular, yet, in that, this witness is contradicted by Burjeau. In addition to this, we have the testimony of the defendant himself, in the publication of the 24th of September, in which he expressly alleges that no one who knows Mr. Judah *can doubt his veracity*. And yet the defendant himself, by the course pursued, undertakes to controvert his own declaration!

It cannot be denied that the story of the dream and the anonymous letter, at the first blush, appears improbable; but when we reflect that in selecting a number to be drawn from so many on a given day, we have nothing to guide us in the choice, and that one which might be dreamed of, according to the doctrine of chances, might as well happen to come out as any other, the difficulty vanishes: and should such number be drawn according to the dream, it is far more irrational, without evidence, to attribute the choice to fraud, than the event to the dream. Besides, it is in evidence that it is the constant practice among those who obtain insurances to be guided in their choice by dreams. The testimony of Brower, Healy and others shows, that in insuring they placed reliance on dreams, and sometimes with success.

The counsel, in the conclusion, again repeated to the jury, that this defence was founded entirely on *suspicion*, and by that alone it was attempted to blast that man's character, which for fifty years had been blameless and unexceptionable; and the counsel hoped that the jury would not, upon vague suspicion merely, suffer such a character to be destroyed.

Wells, in his remarks to the jury, said, that the defendant had charged a *deep laid scheme of villany* against those concerned in the management of our lotteries, and that this was the substance of the com-

plaint laid in the indictment. Instead of meeting the charge, the opposite counsel had endeavoured to exculpate the defendant, by imputing fraud to Judah and Sickels.

The counsel proposed in the first place to show that there was no evidence of fraud which could justify the defendant; and, in the next place, that he was actuated by malice.

He contended to the jury, that the circumstance of the dream and of the anonymous letter did not afford evidence of fraud; and in addition to the arguments of his associate counsel on that part of the case, remarked, that if Judah had intended to commit fraud in the insurance of 15468, he would not have been willing that Thorne should be interested with him to half the amount. When there had been a compromise, and all the parties were satisfied, to preserve the letter was of no use, and it was destroyed; and its non-production is no evidence of fraud. But it is said that the number was soiled; but there had been so many examinations, and so many opinions on this subject, that it would be unsafe to predicate fraud on the appearance of this number. It is in evidence, that the number could not be selected from the others on the table, until they were turned over—that a number of \$30 prizes were more soiled—and General Johnson states that it might have been soiled by the boys stripping off the string.

Is it on testimony of this kind, that the jury would be warranted in assuming that a respectable citizen like Mr. Judah participated in fraud? That he gave up the policies and received the premium is no evidence that he was conscious of wrong, as is insisted on the other side. He knew that however fair may have been the insurance on his part, that the law would not permit him to enforce the contract; and that the payment solely depended on the honour of the insurers. But they refused to pay; and what could he have done different from what he did?

The counsel asserted the improbability of a connexion between Judah and Sickels, by reason of the want of motive on the part of the former; and proceeded to repel the imputation of fraud on

the part of Denniston in connexion with Sickels, in regard to the stationary prize. There was no part of the testimony which could warrant a belief that this was fraudulently drawn ; and it is denied by positive testimony. And the jury are now called on to acquit the defendant, on the broad ground of fraud against Sickels, who had no motive ; and who, instead of having profited by the opportunities afforded him of committing fraud, and by its actual commission, as is pretended, was embarrassed for money, and under the necessity of encumbering his estate.

On this same No. 3, on which so much has been said, Judah was hit for \$2650, for \$600 of which he was hit by this defendant, who now has the effrontery to come into court and allege, that this is evincive of fraud, on the part of Sickels and Judah.

Sickels, it is said, talked of low numbers ; and yet he has not profited a dollar ; but if, as is alleged, the only object of keeping numbers from the wheel was for the benefit of insurers, why were ten taken, when one or two would have answered the same purpose ?

The counsel in the conclusion said, that a character so fair and unexceptionable as Sickels had sustained for half a century was sufficient to bear him above the suspicion of fraud.

The defendant and his counsel examined the suspected numbers, when he admitted that he had been misinformed. Further examinations take place by persons deputed for the purpose, the result of which is that the defendant and Mr. Fay, who are to reap all the civic honours of this exposure, declared themselves perfectly satisfied the very evening before this publication appeared. What follows these explanations ? This libel. And now, where is the justifiable motive which influenced the defendant ?

The Mayor charged the jury. He said, that after a tedious and laborious investigation for three successive days which this trial had occupied, and at the then late hour of the night, he anticipated their fatigue, and feared that he should not be able to discharge the remaining part of his duty, in a manner which the importance of the cause demanded.

The defendant is charged in the indictment

with having written and published a libel against the managers, and the sub-manager of the fifth class of the Medical Science Lottery in this state.

A libel may be defined a malicious and defamatory writing, or publication, against an individual. This, though not a full definition of this offence, embraces all that is necessary for our present purpose.

It will be perceived that this description of the offence does not involve the inquiry whether the writing be true or false ; inasmuch as a publication, though false, may not be a libel, and, though true, may still amount to that offence : but to constitute a libel it is essential that the publication should be made with a *malicious* intent.

When a libellous publication is made, in the first instance, it is presumed to be malicious, but the presumption of malice may be rebutted on the part of the defendant.

It is incumbent on the prosecutor, in the first place, to show the publication of the libel by the defendant, and, in the second place, by a reference to the innuendoes in the indictment, to show that the libellous matter applies to the individual alleged to have been libelled.

According to the law, as it formerly stood, and as it now exists in England, the public prosecutor, on proving the publication, with its reference to the libelled party, might stop ; and the defendant was precluded from proving the truth of the publication ; but now, by a recent statute of our state, the defendant is allowed to prove the truth of the publication ; and the jury, being the judges of the law as well as of the fact, are invested with the prerogative of determining, whether the publication was made with a malicious intent, or with good motives and for justifiable ends.

Throughout this investigation, the jury had perceived that the prosecution had assumed that a charge of fraud against the managers and the sub-manager of the fifth class of the Medical Science Lottery, was contained in this publication ; the innuendoes in the indictment thus explain the meaning ; but, in the opinion of the court, the publication contains no such charge, nor will it bear

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Throughout this investigation, the jury had perceived that the prosecution had assumed that a charge of fraud against the managers and the sub-manager of the fifth class of the Medical Science Lottery, was contained in this publication; the innuendoes in the indictment thus explain the meaning; but, in the opinion of the court, the publication contains no such charge, nor will it bear

that construction. It is a charge of fraud, generally, in lottery management.

That the jury might the better understand the subject, it would be useful to refer to the indictment itself, and the charges it contains. The office of an innuendo was explanatory; and it is designed to show the meaning and design of matter alleged to be libellous; but it is a rule that an innuendo never can extend or enlarge the meaning beyond its true construction.

The jury will perceive, that in the publication of the 19th of September, the writer proposes to unfold to the public a scene of deep laid villany; not *on the part of the managers* of this, or any other lottery, but *in lottery management*. The innuendo goes further than the construction of the part designed to be explained will warrant: ("meaning and intending, the management of the fifth class of the same lottery.")

In the commencement of the alleged libellous publication of the 23d of September, the writer states, that "*in one lottery*, a little boy was detected in the act of having concealed a number," &c.

Now, this is not a charge against the fifth class of the Medical Science Lottery, nor does it relate to any lottery, in particular.

The Mayor proceeded to read the alleged libellous matter set forth in the indictment, referring to the innuendoes, and arrived at the conclusion, that in his view, the publication could not be construed as containing a charge of fraud, either against the managers of the fifth class of the Medical Science Lottery, or against the management of that particular lottery, but it was rather a charge of fraud in lottery management in general, and of carelessness on the part of the managers of this lottery, by which a facility to fraud was afforded.

If the defendant therefore, has proved, that there has been fraud in the management of lotteries in general, or in this particular lottery, by any person or persons, in any manner concerned in such management, then, and on that ground, he would be entitled to an acquittal.

The important inquiry, therefore, on this branch of the subject, will be, whether in this case there is proof of fraud,

or circumstances from which the jury will be justified in drawing an inference of fraud.

The Mayor here proposed briefly to recapitulate the principal facts relied on on both sides.

It had been insisted, on behalf of the defendant, that No. 15468, was fraudulently insured by Mr. Judah, and that Mr. Sickels was a party to this fraud.

We have some positive testimony, in relation to the drawing of that number, to which the attention of the jury would be presently directed. It is said, this number was soiled; and if so, this would afford strong corroborative proof of fraud in the drawing; and with this number, the jury would be justified in connecting Nos. 30 and 3865. It is said, these had been soiled; the jury had examined the whole, and could draw their own conclusions.

The Mayor here proceeded to the particulars leading to the insurance on No. 15468, as related by Thorne. That witness says, that Judah told him that he had dreamed of the number, and tells the jury *the particulars* of that dream, as related by Judah; who, on the other hand, directly contradicts the statement of Thorne, and says, that he told him, that *the number had been dreamed of*, and not that he had dreamed of it himself. In this, Judah is fully corroborated by Moses, and, in some measure, by Burjeau. It is to be remarked, that Judah stands before us as a competent witness; as such, he is to be considered by the Jury, with reference, however, to his peculiar situation in this case. With respect to Moses, no such remark applies: no impropriety on his part has been alleged, and the circumstance of his receiving \$100 from Judah, as related in the testimony, when accompanied with the explanations of that fact, is entitled to little weight.

It is said, that the testimony of Judah is fully corroborated by Burjeau; but it will be remembered, that this witness says that he met Thorne in the street, where he said, that Judah told him that the number had been dreamed of, *or something to that effect*. In regard to this, Burjeau may have been mistaken.

But Judah tells us, that it was on the faith of an anonymous letter, the words of

which he repeats, that the insurance was made, and that this letter has been destroyed. Though his honour should not say, that the destruction of that letter ought to make an unfavourable impression; still, he must say, that it *was* *unfortunate* that this letter was destroyed.

In all his communications with Thorne, relative to the insurance, Judah never mentioned to him any thing about that letter, until on Monday, the 14th of September. It had become the subject of suspicion and dissatisfaction among the insurers; insomuch, that they refused to pay the amount for which the number was insured: and afterwards, a compromise took place between the insurers and Mr. Judah, in which the premium was returned, and the insurance abandoned.

After this, the letter was destroyed: and why? It was written in a female hand; and an examination of the suspected numbers having taken place, by gentlemen deputed for that purpose; in the result of which, the defendant and his counsel, Mr. Fay, declared themselves satisfied; Judah, considering the retention of the letter to be of no further use, destroyed it: this is his explanation. That fraud was committed in the drawing of that number, by Judah, in connexion with Sickels, is one of the principal charges relied on by the defendant. Whether fraud was so committed, was a question which his honour should leave to the jury.

It is further said, that during the drawing of the fourth class lottery, Sickels intimated to Mr. Burtus that there were some low numbers not in the wheel; and also told Mr. Brower that there were certain low numbers of which he need not be afraid. Should the jury believe that Mr. Sickels did make those communications to those gentlemen, then the charge of fraud, so far, is supported. But it is said, on the other hand, that those witnesses are mistaken; and Mr. Sickels, on being called, admits that communications of that nature were made, but denies that he intimated that any numbers were not in the wheel. That witness explains the theory upon which he calculated the low numbers would not be drawn till towards the close of the drawing: but his explanation on this subject

would have been more satisfactory had the testimony stopped here. But it appears that before these witnesses had any further communication with him on the subject, he came to them and stated that the communication made by him was in jest, and requested that they would not divulge it. His explanations on this subject before us are not very satisfactory. Why did he make that communication—and why did he fix on the numbers 3, 5, or 7, in preference to any other numbers within the thousand? But his honour did not intend to instruct the jury that they were not to take the explanations of Mr. Sickels as satisfactory.

It is also alleged, that there was fraud in the drawing the stationary prize of \$35,000 in the Owego Lottery. His honour understood the testimony of Mr. Smith, on this subject, to be, that when the hand of Mr. Sickels went into the wheel, and when he took it out, the witness did not perceive the ticket; and that at the instant of taking out his hand, it fell. The witness says, that he believed that the number was properly drawn; but qualifies this by saying, that from the character of Mr. Sickels, he, the witness, neither did nor should believe that the number was improperly drawn.

The circumstance of the mode of drawing this number, as disclosed in evidence, perhaps would have been unimportant, had it not been connected with another circumstance relied on, which is, that Sickels was interested in this prize with Mr. Denniston; who, on being called, expressly denies the allegation. The jury had heard the explanations made by this witness, and the motive assigned by him why, in the first instance, he alleged that he was but the part owner. That he did communicate to others, a short time after the prize was drawn, the fact that he was the sole owner, satisfactorily appears. With regard to the explanation made by this witness, it appears reasonable, and is satisfactory, should the jury believe him.

Another charge, relied on as evincive of fraud, and that which his honour considered the most important of any in the case, was, that during the drawing of class No. 3, in this lottery, Mr. Sickels

was in possession of four numbers, which he exhibited to the late Mr. Burtus.

Mr. Sickels took down several to Mr. Burtus, and told him they had been found under the wheel. This was a fact known to the managers at the time ; but it appears from the testimony of General Johnson, and other witnesses to this point, that Sickels never imparted to the managers, at the time, that more had been found than those by the boys ; and General Johnson in particular states, that he never heard that Sickels had found any until before the Grand Jury. There, Mr. Sickels stated that he had found ten numbers under the carpet ; and, on this subject, now states that he was mistaken before the Grand Jury ; for he found only three or four. He says, that after he understood the boys had found four under the wheel, he lifted up the carpet on the stage ; and about eighteen inches from the edge of the carpet, on the stage, in a crack of the floor, he found three or four more, and thinks he told one or more of the managers at the time.

Messrs. Gilbert, Denniston, and Gilchrist, declare that he never imparted the circumstance to them. Now, is it not an extraordinary—an astonishing thing, that Mr. Sickels should have found those numbers, and not have imparted the fact to either of these gentlemen ?

His honour would observe upon one more charge as evincive of fraud, relied on by the defendant, and that was with regard to the communications made by Mr. Sickels to Messrs. Haines and Brooks. The jury had heard the testimony of those witnesses and that of Sickels, in denial and explanation, and were to be the sole judges of its truth.

And with regard to the question of fraud, in all or either of the matters to which his honour had called the attention of the jury, without expressing any opinion, he should leave it to them entirely.

Should the jury believe, from the facts and circumstances in the case, that in all or either of the facts relied on, fraud had been committed by any person or persons in any manner concerned in the management of our lotteries—then the defendant stands justified under a recent act of our legislature, allowing the truth

of the matter, contained in the publication charged as libellous, to be given in evidence. For if fraud can be inferred, then the jury may presume that the defendant made the publication with good motives, and for justifiable ends ; the legislature, by the same statute, having invested the jury with the high prerogative of judging of the law as well as of the fact.

But should the jury not believe that the facts and circumstances in this case warrant the inference of fraud, still another inquiry arises : whether the defendant, in making this publication, was actuated by *malicious motives*. For if the jury should believe, that the facts, adduced in evidence by the defendant either as evincive of fraud in the management, or of carelessness in the managers, were sufficient to justify the suspicions expressed in the publication, and excite a well-grounded belief, that the charges were true ; and if, in truth, this lottery has been conducted in that careless, *harum scarum* manner represented in the publication, then the defendant ought not to be rendered criminally responsible for the honest expression of those suspicions, and cannot be said to have been actuated by malice.

His honour was acquainted with the managers, and knew their worth and integrity in private as well as public life ; but, on this occasion, he was constrained to say, that they did not stand acquitted of a gross dereliction of public duty. In the very front of their offending, stood the act of placing Mr. Sickels, or suffering him to remain, in the station he held as sub-manager. He is there, and it is in vain that we inquire, How did he come there, and by whose appointment ? These gentlemen permitted this man to exercise, in their place, the most important and delicate functions of their office to the full extent. Without an oath or any other obligation, we find him there acting as a substitute for the others, or as a sub-manager. For what purpose was Mr. Sickels employed ? It is admitted by all the managers who have been examined, that he was employed to put up the lottery, and was trusted by the managers to count out the numbers when put into the wheel. If

this conduct was calculated to afford a facility to fraud, and the defendant had cognizance of the practice, he cannot be answerable for publishing his suspicions.

Again: the managers allow Mr. Sickels to sit at the wheel—they see him draw a handful of numbers at a time and put them into his lap—they see him draw numbers, or direct him so to do, in the room of the boy—they see him put numbers back into the wheel which had been fairly drawn, or direct him so to do—they see the boy at the wheel, in drawing out the numbers, go ahead of this sub-manager in calling—they saw all these things, or they did not see them; both of which are equal; for it was their duty to have seen and known. Can this, then, be a proper manner of managing a lottery? And is not such management calculated to afford cause for suspicion? If the defendant, therefore, heard of these things, is it just, is it reasonable that he should be punished for publishing his suspicions?

One thing more: it appears that the managers have kept numbers, which have been found during the drawing, out of the wheel until the last day. In the meantime the drawing progresses, and the numbers, not in the wheel, lose their chance again and again. Now, is not this a just cause of suspicion? Again: they intrust the custody of these same numbers to this sub-manager to carry wherever he pleases. Again: on one occasion, towards the close of the drawing, they find a \$10000 prize wanting, and supply the deficiency. This was obviously wrong; and instead of doing as they did, they should have stopped the lottery.

Now, suppose the defendant heard or knew all these things, and published the facts with the suspicions those facts are calculated to excite, will any one say he is culpable? His honour believed not; and for himself did not hesitate to say, that, in this point of view, he considered the conduct of the defendant was rather commendable and praiseworthy.

In the conclusion, his honour remarked that he was happy in being able, on this occasion, to charge the jury expressly, that it was competent for them to acquit the defendant, without imputing fraud

to any individual. The excellent character which Mr. Sickels had uniformly supported for such a number of years—his age—his appearance before us—and especially, at that period in delivering his testimony, when a tear glistened in his eye—all were calculated to make a powerful appeal to the heart, to excite commiseration in his behalf, and to prompt us, with him, to drop a tear.

Should the jury render a verdict for the defendant, his honour did hope that they could acquit him without imputing fraud to any person; though he did not undertake to say that they ought to do so; for the verdict to be pronounced was their own.

The jury retired at about three quarters of an hour after one o'clock on Friday morning, the 13th instant; and at two o'clock returned into court with a verdict of NOT GUILTY.

(CRUELTY TO A BEAST—ACCIDENT.)

ISAAC ROSS' CASE.

To treat a dumb beast, under the care of a man, with cruelty, is a misdemeanor at common law; but where a cartman struck his horse but a single blow with a club, which deprived the animal of life, under circumstances which evinced that the killing was not the result of deliberation, it was held, that an indictment for cruelly beating the horse was not maintained.

During the term of September last, the defendant, a cartman, was indicted for a misdemeanor at common law, for beating his horse with cruelty and killing him with a club.

It appeared in evidence, that the defendant was drawing timber, and being heavily loaded, and his horse being light, and withal baulky, either could not or would not draw; and other cartmen coming to the defendant's assistance, while they were in the act of lifting the load behind, he said, "I can make him draw;" and, taking a slat from the cart, as the horse turned round his head, the defendant struck a blow on his neck, which killed him instantly. The defendant expressed much regret for the accident, and according to the testimony of Charles

Day, the principal witness, he did not believe that the defendant intended to kill the horse.

After the introduction of the testimony, the mayor instructed the jury that the indictment was not supported. This appeared to be rather an accident than the result of deliberate cruelty. At the same time his honour wished it to be distinctly understood in the community, that when a proper case of deliberate cruelty towards a dumb beast under the care and protection of man, which too often occurred in this city, should be brought before the court, they would punish the offender with more satisfaction than for cruelty towards one of our own species.

(BURGLARY—DWELLING-HOUSE.)

JOHN MILL'S CASE.

VAN WYCK, *Counsel for the prosecution.*

PRICE and WILSON, *Counsel for the prisoner.*

A store, in which no person slept, from which there is no communication into other rooms in the house occupied by a family, is not such a *dwelling-house* as that a burglary can be committed therein by a breach and entry.

The prisoner, during the term of September last, was indicted for a burglary and grand larceny in breaking open the *dwelling-house* of James Trivett, (53 Catharine-street,) on the night of the 6th of September instant, and stealing his goods.

It clearly appeared by the testimony of Trivett, and that of Edward Graves, a watchman, that, on the night of the day laid in the indictment, the store was broken open, and the prisoner and another were found in possession of the goods at Catharine Market.

It further appeared, by the cross-examination of Trivett, that he was the owner of the whole house, a part of which he rented to one Comstock, whose family lived there, and the witness re-

tained the store which was broken open. At the time of the felony, no person slept in the store, and from thence there was no communication into the part occupied by Comstock.

The counsel for the prisoner contended, that this was not a burglary, because this was not legally the *dwelling-house* of Trivett. The counsel referred to a decision of this court, 1 Vol. of The City-Hall Recorder, p. 183.

The mayor advised the jury to acquit the prisoner of the burglary, and convict him of the grand larceny, which they did, and he was sentenced to the state prison four years.

(OWNERSHIP.)

WILLIAM WYNES' CASE.

VAN WYCK, *Counsel for the prosecution.*

WILSON, *Counsel for the prisoner.*

Though the son be under the age of twenty-one years, yet if he work for himself, and purchase goods which are afterwards, and while in his possession, stolen, they must be laid in the indictment as his property, and not that of his father.

The prisoner, during the term of September last, was indicted for petit larceny, in stealing a saw, and other articles specified in the indictment, the property of John De Clew; and on the trial Frederick De Clew, the principal witness for the prosecution, testified, that John De Clew was his father, but that he, the witness, worked for himself, and purchased the tools which were stolen from the new building recently erected for the Franklin Bank, while he was engaged there in business for himself as a carpenter.

The mayor said this would not do: the property in this indictment should have been laid as the property of Frederick De Clew; and, on this ground, the jury, by the advice of the court, acquitted the prisoner.